

Robbins Geller gets top spot in suit over Novo Nordisk obesity drug

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(April 14, 2025) - A New Jersey federal judge has tapped [Robbins Geller Rudman & Dowd LLP](#) as lead counsel in a proposed class action alleging Novo Nordisk A/S misled investors about a clinical trial of its obesity medication.

Moon v. Novo Nordisk A/S et al., No. 25-cv-713, *order issued* (D.N.J. Apr. 9, 2025).

The April 9 order by U.S. District Judge Robert Kirsch of the District of New Jersey also appointed three pension funds as lead plaintiffs in the securities fraud suit.

'Flexible' protocol

The complaint, filed Jan. 24 by Novo Nordisk shareholder Changyeon Moon, says the company concealed material information about a clinical trial of the obesity drug CagriSema that it launched in late 2022.

Novo Nordisk made "overwhelmingly positive" statements about the trial, expressing confidence that there would be a minimum 25% average weight loss among obesity patients receiving treatment with CagriSema compared with those receiving a placebo, the suit says.

However, the defendants failed to disclose that the trial had a "flexible dosing" protocol that allowed patients to modify their dosage, the complaint says. This feature led to diminished trial results, as less than 60% of patients reached the maximum dose of CagriSema, according to the suit.

Novo Nordisk disclosed the flexible protocol when it released preliminary trial results Dec. 20, 2024, that showed a 22.7% average weight loss after 68 weeks, the suit says.

The company's share price fell nearly 18% that day, closing at \$85, as multiple securities analysts reported that tolerability issues may have affected patients' willingness to take the drug at higher doses, the complaint says.

Novo Nordisk CEO Lars F. Jorgensen and Executive Vice President of Development Martin H. Lange are also defendants in the suit, which alleges violations of the Securities Exchange Act of 1934, [15 U.S.C.A. §§ 78j\(b\)](#) and [78t\(a\)](#).

Lead plaintiff chosen

Prospective class members filed six motions for lead plaintiff appointment in the suit, including one by New York Hotel Trades Council & Hotel Association of New York City Inc. Pension Fund, Pavers & Road Builders District Council Pension Fund and City of Kissimmee General Employees' Retirement Plan.

The pension funds asserted that they had combined losses of more than \$832,000 on Novo Nordisk shares purchased during the proposed class period.

The Private Securities Litigation Reform Act of 1995, [15 U.S.C.A. § 78u-4\(a\)\(3\)\(B\)](#), requires courts to appoint the movant with the largest financial interest in the suit that otherwise satisfies the requirements of [Federal Rule of Civil Procedure 23](#).

The competing movants subsequently withdrew or filed notices of non-opposition to the pension funds' motion.

Judge Kirsch granted the motion and approved the pension funds' choice of Robbins Geller as lead counsel and [Seeger Weiss LLP](#) as liaison counsel.

By Nicole Banas

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Class Action

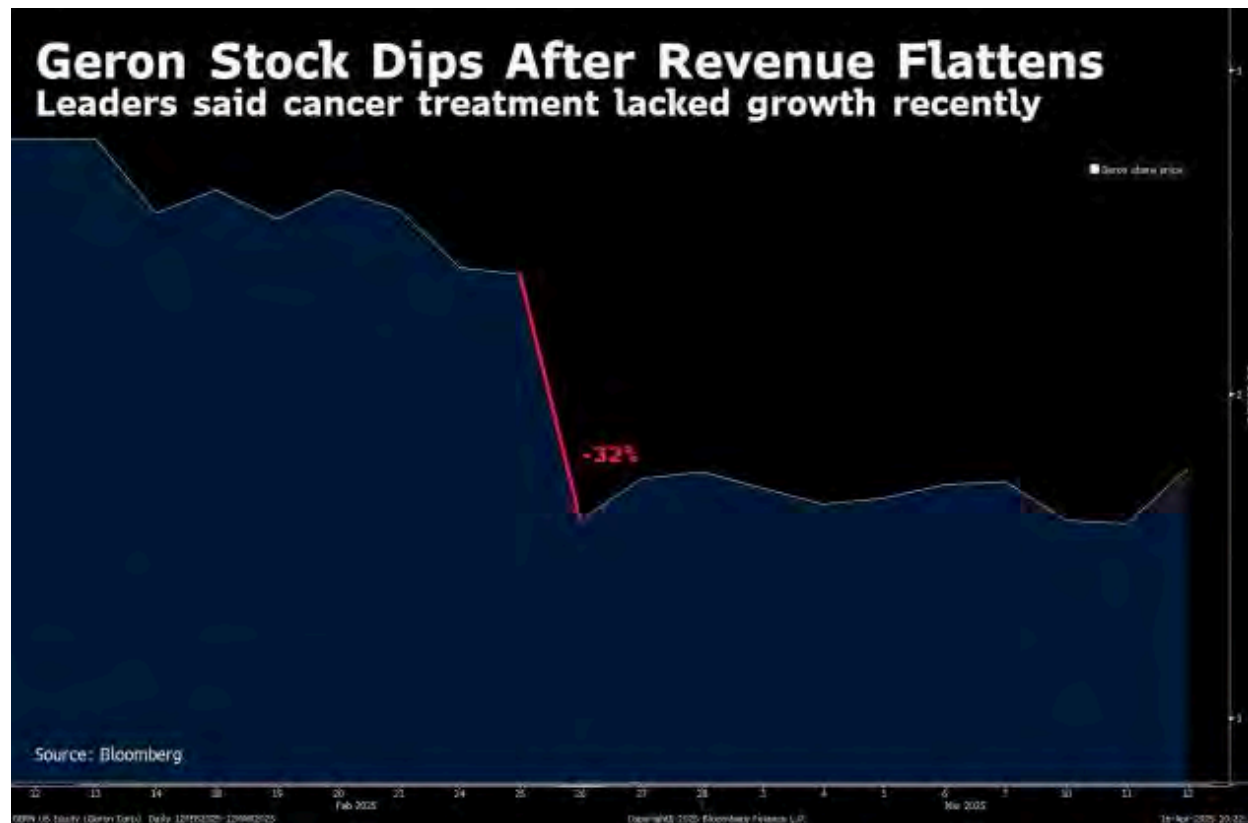
April 16, 2025, 7:40 AM PDT

Geron Brass Sued Over Cancer Drug Prospects After 32% Stock Drop

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** No. [3:25-cv-03356](#) (Bloomberg Law subscription)

Geron Corp. leadership overhyped its flagship blood cancer treatment's commercial prospects before revealing its lack of traction flattened revenue trends, a shareholder lawsuit said.

Share prices fell more than 32% on Feb. 26 after the company revealed the stagnation at the start of the first quarter alongside its fourth fiscal quarter and full-year results, a stockholder told the US District Court for the Northern District of California on Tuesday. It was the stock's biggest single-day drop since September 2018, according to data compiled by Bloomberg.



Top brass in a Feb. 26 investor call attached curtailed growth from the treatment, Rytelo, to the seasonality going back to November, competition, lack of awareness among health care providers, and the burden of its monitoring requirements, said plaintiff Edward Troy Bishop. Rytelo, a telomerase inhibitor, was approved for use in adults with a certain blood condition by the US Food and Drug Administration in 2024.

Current and former executives and board members harmed Geron's reputation and wallet by causing it to issue rosy projections about Rytelo, exposing it to potentially costly litigation in the wake of the stock drop, Bishop said in the derivative action, which is brought against leaders on behalf of the company. A pair of proposed class actions alleging similar issues were filed in the same court last month.

These securities suits aren't the first that Geron and top brass have faced in recent years. In 2023, Geron's \$24 million settlement got court approval to resolve a class action that alleged it had misled investors about the success of a bone marrow cancer therapy trial in 2018.

Wolf Haldenstein Adler Freeman & Herz LLP, Rigrodsky Law PA, and Grabar Law Office represent Bishop, who alleged wrongdoing by management from at least Feb. 28, 2024, through Feb. 25, 2025. He seeks damages against the leaders on behalf of Geron for alleged securities law violations, breaches of and aiding and abetting breaches of fiduciary duty, unjust enrichment, and waste of corporate assets.

Geron didn't immediately respond to an email seeking comment. Neither did the firm representing it in the similar proposed class actions, Cooley LLP.

The case is Bishop v. Scarlett , N.D. Cal., No. 3:25-cv-03356, complaint filed 4/15/25 .

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Class Action

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Mobileye Beats Investor Suit Over Saturated Inventory Issues

Mobileye Global Inc. defeated investor allegations that it concealed purchasing excess inventory to avoid supply chain shortages, later hindering the autonomous driving company's financial results.

Investors failed to allege "any material misstatement or any deceptive conduct" to carry securities fraud claims, said Judge Denise L. Cote of the US District Court for the Southern District of New York on Wednesday while ordering the case to be closed.

The case is In re Mobileye Glob. Sec. Litig. , S.D.N.Y., No. 1:24-cv-00310, 4/16/25 .

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Litigation

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Former AutoZone CEO Escapes Investor's Short Swing Profit Suit

AutoZone Inc.'s former CEO defeated a shareholder's lawsuit alleging the over \$1 million he earned off of selling stock out of a trust was short-swing profits that should be turned over.

Judge Jon P. McCalla of the US District Court for the Western District of Tennessee ultimately ruled in favor of William C. Rhodes III, saying his sales were exempt from a US securities law provision that corporate insiders are liable to their company for any profits collected off buying and selling its stock within a six months of each other. McCalla said Rhodes' 2022 stock acquisitions were exempted as a result of a Securities and Exchange Commission rule for transactions that change just someone's ownership format, not their monetary interest in, the securities.

- The stock was from in-kind payments under terms of a grantor retained annuity trust that the ex-executive was the grantor, trustee, and sole lifetime beneficiary of, Rhodes had said
- McCalla said that Rhodes had the same pecuniary interest in the stock when it was in the GRAT before the 2022 payments, ordering that the case be closed Monday
- An AutoZone shareholder sued in 2024, alleging that Rhodes got shares out of the trust then sold them within a six-month period for more than \$1 million in violation of a US securities regulation

Sterlington PLLC represented the plaintiff, Nosirrah Management LLC. Baker, Donelson, Bearman, Caldwell & Berkowitz PC represented Rhodes. Neither firm immediately responded to emails seeking comment.

The case is Nosirrah Mgmt., LLC v. AutoZone Inc. , W.D. Tenn., No. 2:24-cv-02167, closed 4/14/25 .

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Looks Prehistoric

 10b5daily.com/2025/04/15/looks-prehistoric

April 15, 2025

An ongoing issue in securities litigation is to what extent a short seller's report can act as a corrective disclosure for purposes of establishing loss causation. The U.S. Court of Appeals for the Fourth Circuit had the opportunity to address that issue for the first time last week.

In *Defeo v. IonQ, Inc.*, 2025 WL 1035292 (4th Cir. April, 8, 2025), the plaintiffs alleged that a short seller report had revealed to investors that IonQ, which makes quantum computing systems, did not have a working product and its revenues were driven by phony related-party transactions. The company responded to the report with a short press release deriding the report's inaccuracies and then later issued a longer rebuttal. The company's stock price declined during this period.

The district court held that the plaintiffs' complaint did not contain any reliable sources and therefore failed to adequately plead the elements of a federal securities claim. In addressing a subsequent amended complaint, however, the district court found that the amendment was futile solely on the basis that the plaintiffs could not adequately plead loss causation.

On appeal, the Fourth Circuit only addressed the issue of loss causation. As to the short seller report, the court noted that while short seller reports could potentially act as corrective disclosures, in this instance the report "relies on anonymous sources for its nonpublic information and disclaims its accuracy." Indeed, as to the report's use of sources, the publisher stated that some quotations "may be paraphrased, truncated, and/or summarized solely at our discretion, and do not always represent a precise transcript of those conversations." Under these circumstances, the Fourth Circuit concluded that the "potential evidentiary value [of the report] evaporates" and it could not form the basis for loss causation.

Alternatively, the plaintiffs argued that the company's initial response to the short seller report, which did not provide a point-by-point rebuttal, revealed to investors that the report was to some extent accurate. The Fourth Circuit noted it could "envision a scenario where a third party exposes some unverified bombshell about a company and the company's tacit *mea culpa* could function as a verification of that bombshell" but that this "theory holds no water here." The company's press release generally rejected the report's allegations.

Holding: Judgment of the district court finding amendment futile affirmed.

Quote of note: "The Report's publisher admits some quotations 'may be paraphrased, truncated, and/or summarized solely at our discretion, and do not always represent a precise transcript of those conversations.' That disclosure is particularly troubling because it gives Scorpion Capital the kind of editorial license that could allow it to say just about anything and cloak it in the imprimatur of truth in order to make a buck. For example: If an expert represented, 'IonQ's 32-qubit system is revolutionary. By comparison, Company Y's system looks prehistoric,' Scorpion Capital gave itself the freedom to say, 'IonQ's 32-qubit system looks prehistoric,' and attribute that quote to an expert. In all, those disclosures lead to the conclusion that 'the character of the' Report 'rendered it inadequate' to reveal any alleged truth to the market."

Chancery Dismisses Claims That a Merger Involved a Conflicted Controller but Allows Limited Discovery Into Alleged Disclosure Violation

 [law.com/delbizcourt/2025/04/16/chancery-dismisses-claims-that-a-merger-involved-a-conflicted-controller-but-allows-limited-discovery-into-alleged-disclosure-violation](https://www.law.com/delbizcourt/2025/04/16/chancery-dismisses-claims-that-a-merger-involved-a-conflicted-controller-but-allows-limited-discovery-into-alleged-disclosure-violation)

Lewis H. Lazarus

April 16, 2025

Whether a party is a controlling stockholder in a conflicted transaction determines the standard of review. If a stockholder owns more than 50% of the voting shares and therefore can control the board, there is no question it is a controlling stockholder. If the stockholder owns a large block but less than a majority, then whether it is a controlling stockholder is context dependent. Even if a party is not deemed a controller, if the transaction is an end-stage cashout merger, then the transaction may be subject to enhanced scrutiny unless fully informed and uncoerced, disinterested stockholders approve the transaction. In *Anchorage Police & Fire Retirement System v. Adolf*, C. A. No. 2024-0354-KSJM (April 3, 2025), the Delaware Court of Chancery rejected a claim that a 20.6% stockholder was a controlling stockholder but held that plaintiff adequately had alleged one of its several claims of deficient disclosure and so permitted limited discovery solely into that one claim.

Background

Anchorage involved a stockholder challenge to a merger transaction resulting from an eight-month sale process. The seller formed a special committee to run the sale process four months after the sale process began, advised by a Delaware law firm and two financial advisers. One stockholder owned 20.6% of the seller's equity. The seller also was party to a credit agreement that provided for acceleration of the seller's approximately \$2.5 billion debt upon a "change of control," defined to include a party acquiring 35% or more of the seller's voting stock. The credit agreement included a carveout if certain permitted holders, including the owner of the 20.6% equity bloc, had the right to elect or otherwise designate for election in the new company at least a majority of the seller's board. The 20.6% holder also had a right to a lump-sum payment of certain tax receivable agreement benefits upon a change in control. The special committee members also had a right to certain tax receivable agreement benefits in certain circumstances. A private equity buyer was the first to express interest with a written offer at \$50 per share that also mentioned the bidder's reputation for helping management and that it "would be an outstanding partner for the management team." The seller's financial adviser counseled that it was unlikely that a strategic buyer would emerge as a potential acquiror. Nonetheless, three months into the process, management met with a strategic buyer at the suggestion of the financial adviser, a meeting not reported to the board. Even though it later learned that the strategic buyer was prepared to pay \$2 more per share, the special committee accepted a deal at \$53 per share favored by the holder of the

20.6% bloc in which that holder would roll over 10% of its equity interest and receive the right to appoint a majority of the post-merger board. The strategic buyer's bid, in contrast, did not require a management rollover of its equity. One day prior, the board had increased the compensation of the special committee chair from \$80,000 to \$280,000 and the other three special committee members from \$40,000 to \$240,000. The Merger Agreement also provided for the accelerated vesting of the special committee members' tax receivable agreement benefits. The plaintiff brought a class action challenging the fairness of the transaction, claiming that the transaction merited entire fairness review because it involved a conflicted controller, and even if not, that inadequate disclosures prevented *Corwin* cleansing.

Court Rejects Plaintiff's Claim That the Transaction Involved a Controlling Stockholder

The court conducted a careful holistic analysis and concluded that the plaintiff had failed to allege sufficient facts to indicate that the holder of the 20.6% bloc exercised general or transaction-specific control over the transaction. While the court agreed that the stock ownership, voting power to elect two of the nine-person board, and rights under the credit agreement were factors indicating that the 20.6% holder could exercise influence, these factors did not suffice to demonstrate transaction-specific control. The court viewed the potential taxable receivable agreement payouts as suggesting a potential conflict but not evidence of control. Similarly, the court found that the plaintiff failed to allege sufficient facts to suggest that the last-minute increase in special committee compensation created a "degree of owingness" to the large equity holder. The court also rejected the plaintiff's claim that historical ties or parallel interests of the large equity holder with certain officer directors evidenced a control group. Accordingly, the court held that the transaction did not involve a controlling stockholder or group and therefore was not subject to entire fairness review.

Court Finds One Claim of Deficient Disclosure Prevents 'Corwin' Cleansing

The court rejected all but one of the plaintiff's eight claims of deficient disclosure, finding inadequate the seller's description of the interaction with the strategic bidder. What the court found potentially material were plaintiff's allegations that the seller misrepresented that the special committee's agreement to exclusivity with the private equity buyer in the month prior to the final transaction was based on the strategic buyer's being behind in its due diligence. The court relied upon the plaintiff's allegation that the "Defendants iced the strategic buyer out of the sale process" to conclude that, if true, a reasonable stockholder would find this fact material. The court buttressed its materiality conclusion by noting that one of the special committee's financial advisers had advised throughout the sales process that the strategic buyers would not be interested in the seller. The defendants sought to introduce facts

outside the complaint from documents produced in response to a Section 220 books and records demand not to demonstrate that plaintiff's factual allegations were inaccurate, but to contradict well-pleaded allegations in the complaint. This caused the court to convert their motion to dismiss to a motion for summary judgment, to deny the motion, and to permit discovery limited to the seller's interaction with the strategic buyer.

Key Takeaways

A plaintiff seeking to invoke entire fairness review based on an alleged conflict of interest transaction with a controlling stockholder must allege sufficient facts to demonstrate general or transaction-specific control. Where a stockholder owns a substantial percentage of equity such as 20.6% but does not have contract or other rights to elect a majority of the board, then a plaintiff must allege sufficient other facts to demonstrate the stockholder exercised actual control. The court carefully addressed each of the plaintiff's control allegations but found them wanting in this case based on a holistic analysis. Similarly, if a defendant seeks to rebut alleged disclosure deficiencies by introducing facts outside the record for a motion to dismiss, then the court may convert a motion to dismiss to a motion for summary judgment. This case demonstrates that in the latter circumstance, the court may deny the motion but limit discovery to the allegations that created the factual issue.

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Two Recent Decisions on Reliance Leave the Ability of Passive Investors to Make Claims in U.K. Securities Cases Unsettled

► insights.issgovernance.com/posts/two-recent-decisions-on-reliance-leave-the-ability-of-passive-investors-to-make-claims-in-u-k-securities-cases-unsettled

Ayie Picar

April 16, 2025



There have been two recent decisions in the High Court of Justice in the United Kingdom that could have wide potential implications for passive investors pursuing securities claims in that jurisdiction. In an October 25, 2024, judgment in *Allianz Funds Multi-Strategy Trust & Ors v. Barclays plc* [2024] EWHC 2710 (Ch) ("*Barclays*"), Mr. Justice Thomas Leech decided that passive investors were unable to prove reliance as a matter of law and therefore could no longer continue their securities claims. However, Mr. Justice Michael Green in a March 25, 2025, judgment in *Persons Identified in Schedule 1 v. Standard Chartered plc* [2025] EWHC 698 (Ch) ("*Standard Chartered*"), took a wholly different track and allowed the claims of passive investors to proceed to trial. These two opposing decisions so close in time together show that the law on whether passive investors may pursue securities claims in the U.K. is unsettled and ripe for a clarifying decision from an appellate court.

Some investors are active in that they review company filings, earnings calls, and market data in order to make trading decisions. Other investors are passive, purchasing shares to track indices or meet some sort of benchmark. A common and important element in

securities litigation in many jurisdictions is reliance. In other words, if a company were alleged to have made a false statement that artificially inflated the price of its security, the claimant investor must have relied on that statement deciding to purchase that security.

In the United States, there is a presumption of reliance in securities class actions, such that if plaintiffs can show that a security traded in an efficient market, then it is presumed that the price of the security incorporated all public information, which would therefore also include any alleged false statements. Thus, the key in the U.S. is establishing market efficiency for a security and defeating any attempts by defendants to rebut the presumption of reliance (usually arguments that the alleged false statements did not impact the price of the security). But in other jurisdictions, claimants may need to show evidence of actual reliance, such as an internal memo by a portfolio manager listing the alleged false statement as a reason to buy, hold, or sell. In such jurisdictions, passive investors are therefore unable to show such specific evidence. A middle ground would be an investor who did not review an alleged misrepresentation but relied upon independent sell-side research reports to inform its investment decision, where such reports in turn considered the alleged false statements.

Claims in securities suits in the U.K. are typically made under the Financial Services and Markets Act of 2000 (“FSMA”). A key provision of the FSMA states, among other things, “[a]n issuer of securities [] is liable to pay compensation to a person who — (a) acquires, continues to hold or disposes of the securities **in reliance** on published information” (emphasis added).¹ In *Barclays*, investors alleged that Barclays made false statements related to its ‘dark pool’ trading system. Barclays moved for summary judgment for, among other things, claims made by passive investors because they were unable to claim reliance. Leech J agreed with defendants, finding the use of the term reliance in the FSMA meant that “Parliament did not intend to ‘start afresh’ but recognised that the Courts have developed a separate test of reliance in the tort of deceit[.]”² He elaborated that investors cannot “satisfy this test unless their representatives read and considered that public information or third parties who directed or influenced their investment decisions read and considered the published information.”³ Thus, Leech J declined to find that the U.K. recognized a presumption of reliance as in the U.S. As a result, £332 worth of claims for 241 claimants (about 60% of the total value of all claims) were struck out of the case, which settled before appeal to a higher court.⁴

As a wider consequence, *Barclays* cast into doubt whether passive investors would ever be able to successfully make securities claims. Indeed, now some litigation funders and law firms have been looking at damages in aggregate both among all claimants and just among active investors, because the valuation and viability of cases could potentially change dramatically if passive investors were excluded. Furthermore, if the *Barclays* holding were ultimately to prevail, it would likely substantially reduce the size of settlements and number of cases in the U.K. However, Leech J is simply a judge of court of first instance, not an appellate judge, so arguably his judgment does not have precedential effect.

Meanwhile, *Standard Chartered* was also pending. That case involves securities allegations related to alleged non-compliance with international sanctions requirements. Standard Chartered moved for summary judgement on, among other things, claims of passive investors due to the ruling in *Barclays*, arguing that as a matter of judicial comity to avoid duplication of judicial resources and to achieve consistency in the law, Green J should follow this ruling.⁵ It was contended that if he were to do so, £762 million worth of claims for 949 funds (about 49% of the total value) would be eliminated.⁶

However, Green J declined to strike out the claims of passive investors, allowing for this issue to be determined based on the factual record at trial. He stated, “I think it would be to ignore reality to suggest that this is not a live and possibly developing area of the law. [] It was probably anticipated that [*Barclays*] would be appealed but as it turned out the case settled” beforehand.⁷ He decided to not apply *Barclays*, as he doubted whether, “the common law test for reliance was intended by Parliament to be adopted for the requirement to prove ‘reliance’” because it did not make sense in relation to omissions and did not seem to work consistently with applications to misstatements.⁸

SCAS reached out to John Evans, Head of Dispute Resolution at Fladgate LLP (a London based law firm with a track record of acting in substantial class actions) for his perspective on the rulings. “The recent judgment of Green J in *Standard Chartered* should be greeted positively by all investors who potentially have securities claims in the United Kingdom” said Evans. “It seems only equitable that the question of whether or not a class of investors have a sustainable right to participate in a securities claim should be decided at a full trial of the action, when all of the relevant facts are put before the Court, rather than at an early stage when, as a matter of necessity, only limited evidence can be adduced before the judge. It remains important to assess whether investors are active or passive investors in the relevant security, to ensure that the prospective claim can weather further developments and remain financially viable. Green J’s judgment is a welcome demonstration that just because an investor is passive, does not prevent that investor from joining collective redress actions in England to seek compensation for its losses.”

In sum, the practical effect of *Standard Chartered* is that these claims live on in that case but could still be eliminated at trial. The wider implication of the decision is that the law is truly unsettled on reliance. It is not clear what might happen if there is a trial in *Standard Chartered*, and it is possible that another court, quite possibly (if not likely at some point) the Court of Appeals, would render a decision on this precise issue. The U.K. Parliament could even pass legislation clarifying the law. As such passive investors in the U.K. are stuck in something of a lurch, as the law could evolve in either direction. Regardless, this is an important topic and another question investors will have to weigh in evaluating actions in the U.K. as the value of claims could vary dramatically depending on which way the law develops.

¹ *Standard Chartered* at ¶23.

² *Barclays* at ¶107.

³ *Barclays* at ¶129.

⁴ *Standard Chartered* at ¶4.

⁵ *Standard Chartered* at ¶5.

⁶ *Standard Chartered* at ¶4. Notably, the California State Teachers' Retirement System ("CalSTRS") provided a witness statement in the action, underscoring the importance of global actions to U.S. based investors. *Standard Chartered* at ¶28.

⁷ *Standard Chartered* at ¶16.

⁸ *Standard Chartered* at ¶85.

"No portion of this insight constitutes legal or financial advice, and no attorney-client relationship is intended or is established."

By:

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Litigation

April 16, 2025, 9:36 AM PDT

Carvana Stock Sales by CEO's Father Probed in Delaware Court

- Carvana's largest investor, CEO have faced multiple lawsuits
- Insider trading claims stem from state compliance problems

Nearly a year of stock sales by Carvana Co.'s largest investor amid state regulatory challenges and the Covid-19 pandemic were probed Wednesday by Delaware's highest court, whose questions focused on the trades' timing and motivation.

A lower court should have drawn inferences about a trading schedule in the plaintiff's favor until its details are revealed, said Daniel Tepper of Levi & Korsinsky LLP. Tepper's client is seeking to revive insider trading claims that Ernest Garcia II, father of the used car retailer's CEO, began unloading over \$3.6 billion in Carvana stock before the company disclosed that its failure to comply with varying state motor vehicle title and registration laws could hurt the business.

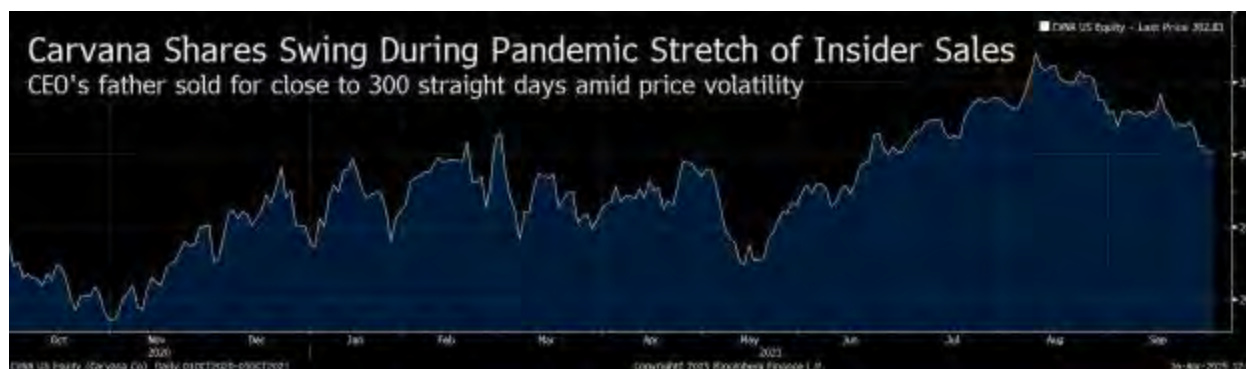
Garcia sold stock almost daily for some 300 days, starting in October 2020, said Justice Karen L. Valihura.

"How does that affect your theory he was selling in response to specific events?" she asked Tepper.

Carvana and Garcia have said all but one of the stock sales fell under a predetermined trading schedule that was adjusted as the company's share price rose. But the company hasn't produced details about Garcia's trading plan, and the Delaware Chancery Court should have drawn inferences about it in plaintiff Rhonda Schertz's favor at this stage in the litigation, Tepper told the Delaware Supreme Court's full five-member panel.

Carvana and Garcia would have the opportunity to produce the plan in discovery, but until then, "no inferences should be drawn as to whether these plans were appropriately entered into, and about whether the plans were appropriately modified," he said.

The number of shares sold each day increased as Carvana's stock price increased, said Andrew Clubok of Latham & Watkins LLP, representing Garcia. "Notably, each one of those changes comes before months and months and months of sustained, continued growth," he said. "They're not timed before some big drops."



Chancellor Kathaleen St. Jude McCormick, the Chancery Court's chief judge, dismissed Schertz's complaint in September. Clubok noted that a federal court in Arizona had dismissed insider trading claims on similar grounds in February 2024.

Rather than showing that Garcia must have known material, non-public information, Schertz only has to plead that "the information is knowable and Mr. Garcia was in a position to know it," Tepper said. "It's a very low standard."

Justice Abigail M. LeGrow pressed Tepper on how Schertz's complaint shows that Garcia's position went "past a bare-bones relationship" with the company and met that standard.

Garcia controls 84% of Carvana's voting power, and the company acknowledges in SEC filings that his family controls the company, Tepper replied. Following state title and registration laws is central to the company's core operations, and it's "conceivable" that Garcia knew information that wasn't public and was motivated to sell his stock because of it, he said.

Other lawsuits in Chancery Court also have targeted Garcia and CEO Ernest Garcia III over Carvana's pandemic-era finances. In March 2024, McCormick concluded the board's special litigation committee properly investigated claims that the Garcias benefited financially when the company refinanced during market panic in early 2020. The same judge in September 2023 ruled against a shareholder's challenge to Carvana's stock structure, which assigns supervoting rights to shares held by the Garcias.

Schertz is also represented by Ashby & Geddes PA and Robbins LLP. Garcia and Carvana are also represented by Ross Aronstam & Moritz LLP.

The case is Schertz v. Garcia II, Del., No. 446,2024, oral arguments 4/16/25 .

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Class Action

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Tariff Turmoil Opens Door to Insider Trading Suspicion, Lawsuits

Deep Dive

- **Volatility likely to prompt short-swing trading claims**
- **Securities fraud suits will be hard to prove, attorneys say**

Tariff-related announcements have sent the stock market on a wild ride, setting the stage for securities lawsuits over corporate insiders' trades and company disclosures.

A suit alleging that a 1-800-Flowers insider conducted short-swing trading has already been filed, and attorneys see the potential for a trend to take shape.

"Tariffs are having such a big and immediate impact on equities on a daily basis in both directions, that the environment is ripe for really significant insider trading," John Rizio-Hamilton of Bernstein Litowitz Berger & Grossmann LLP said.

President Donald Trump's tariff rollout has spurred market-wide volatility as the administration has shifted how much, when, and what its policy targets. It's included a tit-for-tat with China, with the US announcing a 145% tariff on Chinese imports and China raising its tariff to 125% on US goods, as of Tuesday.

Classic securities fraud suits alleging that misrepresentations or omissions propped up a company's stock price will almost surely follow Trump's announcements, but will be hard to prove, Dean Conway of Carlton Fields PA said.

"Similar to the global financial crisis, anytime there is a significant market dislocation, lawsuits will follow to recover investor losses," Conway said.

"Nonetheless, proving that a company intentionally misled investors about the impact of the Trump administration's evolving tariff policies will likely prove to be a difficult job," he said.

Insiders Under Microscope

Insider trading lawsuits can involve the deliberate use of material nonpublic information—or simply profitable trading within a six-month span.

One of the first suits to focus on 2025's stock volatility targeted a fund with a stake in 1-800-Flowers.com—an insider because it owns more than 10% of the company's stock. The suit alleges the fund profited by selling high and buying low within a six-month span ending in late March, just as talk of possible tariffs rattled Wall Street.

Section 16(b) of the Securities Exchange Act aims to prevent corporate insiders from profiting from short-swing trading, or trading in their company's stock within a six-month period.

When there's volatility, and someone who qualifies as an insider, plaintiffs' firms may file suits, Susan Hurd of Alston & Bird LLP said. "And they will argue that they should get fees if they're successful, because they have created a benefit to the corporation," she said. "That doesn't require a plaintiff's firm to take on a huge class action on a contingency basis."

'In the Know'

Allegations that individuals or companies traded on the basis of nonpublic knowledge about upcoming tariff announcements could fuel a trend, said Rizio-Hamilton, who represents investors. That knowledge could be information that had "spread to them" from the administration, he said.

"There's a lot of discussion about who knows what pronouncements are going to come out of the White House, in advance, on these tariff issues," Hurd said. "Who's in the know? Who might know that there's going to be an announcement that tariffs are going to be stayed or they're going to be modified in a favorable way?"

"If somebody knows that information and trades on it, then you have classic market manipulation or insider trading claims, potentially," she said.

Trump's comments and social media posts themselves have sparked questions about profiting from stock volatility.

On April 11, Democratic Senate leaders asked state attorneys general to investigate "whether President Trump, his family, members of his administration, or members of Congress engaged in insider trading, market manipulation, or any violations of the laws of your states in order to profit from recent changes to tariff policy."

Insider trading suits could be based on volatility in either direction, Rizio-Hamilton said.

'Whipsawing' Market Defense

There is the potential for vast damages if plaintiffs' attorneys can craft a securities claim, said John Bielema of Bryan Cave Leighton Paisner LLP. He hypothesized an allegation that statements were "misleading about the extent of their reliance on foreign parts or imports/exports, thus misleading the market about how devastating the effect of tariffs would actually be once implemented."

But it'll be difficult for them to plead "how a disclosure 'revealed the truth' that caused the loss," Bielema said.

Some suits could allege misstatements or omissions about the tariffs' impact on overall business, pricing, sales, or the supply chain, Rizio-Hamilton said.

"I'm sure that you'll see defenses mounted along the lines that the situation was changing so quickly and whipsawing so fast, that it's impossible to plead that the statements were false when made, and it's impossible to plead any level of intent associated with them," the plaintiffs' attorney said.

Companies relying on trade with China could be particularly targeted, Roger Cooper of Cleary Gottlieb Steen & Hamilton LLP said.

It's hard to win securities fraud claims on stock drops amid tariff turbulence given the whole market was falling, Cooper said.

And Trump hasn't exactly been shy about "telling anyone who would listen that he believed in some sort of tariff system," Bielema said, "so it was at some level public information."

Cooper likened the difficulty for plaintiffs to get past a motion to dismiss to pandemic-related allegations, after the market dropped across the board and investors filed numerous securities suits over supply chain issues or shifts in demand. Cooper expects a delayed reaction to potential tariff-related securities suits, maybe being filed toward the end of this year or early next.

"You're starting to see a lot of companies talk about tariffs," plaintiffs' attorney Thomas Laughlin of Scott & Scott Attorneys at Law LLP said. "What should they say? What is going to be sufficient?"

"And sometimes, are they blaming tariffs when, in reality, they have a different problem?" he said. They could just be trying "to use the tariff issue as cover."

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Trump Tariffs Spark Stock-Trade Ethics Reckoning on Capitol Hill

- Lawmakers traded Apple, Amazon, Tesla amid market see-saws
- Trade war spotlights ethics concerns as watchdog languishes

President Donald Trump's trade wars and the ensuing financial market whiplash are sparking fresh scrutiny on Capitol Hill over lawmakers' stock trades. But it comes as Congress operates without a functioning in-house ethics watchdog and a lack of real penalties for lawmakers who fail to make financial disclosures.

Members of Congress bought and sold stock in recent weeks in companies affected by shifting tariffs and other administration policies, including Apple, Amazon, and Elon Musk's Tesla.

Rep. Marjorie Taylor Greene (R-Ga.) bought thousands of dollars in stocks including Apple, Tesla, and Nike on April 8 and 9, right before Trump announced a 90-day pause on many tariffs and markets surged. Greene raised eyebrows for "buying the dip," though Trump acolytes outside Congress could have also benefited: Trump posted earlier that it was a "GREAT TIME TO BUY!!!"

Public documents show Reps. Gil Cisneros (D-Calif.), Josh Gottheimer (D-N.J.), and Rob Bresnahan (R-Pa.) dumped Tesla stock last month as Trump ally Musk's company floundered.

Gottheimer, who is running for governor of New Jersey, also reported numerous trades including the sale of alcohol conglomerate Diageo, while Rep. Tim Moore (R-N.C.) purchased stock in Ford Motor Co. this year, disclosures show.

Given the 45-day reporting lag, most of the recently-disclosed stock trades are from March or earlier, before this month's financial volatility.

"We're going to learn a lot more in the next month," said Rep. Mike Levin (D-Calif.), an opponent of congressional stock trading. Levin and other Democrats have raised questions about whether any members of Congress were tipped off about Trump's tariff pause — including at the April 8 National Republican Congressional Committee dinner.

Democratic Leader Hakeem Jeffries (D-N.Y.) has also sounded the alarm about House Republicans potentially profiting off early Trump information. Levin said this is an encouraging signal that Democrats will take action on congressional stock trading if they retake the House next year.

Members' trades are legal if they don't involve insider information. They must report trades within 45 days to their respective legislative chambers.

"The problem is, you are always going to have an appearance of conflict of interest whenever members trade," said Kedric Payne, the Campaign Legal Center's vice president, general counsel, and senior director of ethics.

Violations are limited and rare. The penalty for a late filing: \$200. A sitting lawmaker has never been successfully prosecuted for violating that law.

"The penalties are less than a slap on the wrist," said Meredith McGehee, a longtime advocate for governmental and congressional ethics.

Watchdog neutered?

Capitol Hill's in-house watch dog organization, the Office of Congressional Conduct (formerly the Office of Congressional Ethics), can't yet operate because it lacks a chair four months into the new Congress.

The office is charged with overseeing House lawmakers' stock trades and other ethics matters. The speaker names the chair, while the minority leader names the co-chair.

Jeffries has submitted his nominations for the office, according to a person familiar who spoke on condition of anonymity to discuss information that hasn't been made public. That leaves it up to Speaker Mike Johnson (R-La.) to make his picks. Johnson's office didn't respond to a request for comment on why the panel's leadership hasn't been named.



House Minority Leader Hakeem Jeffries (D-NY.) has made his picks for the Office of Congressional Conduct, but Speaker Mike Johnson (R-La.) has yet to make his selections.

Photo by Chip Somodevilla/Getty Images

The Campaign Legal Center and other pro-transparency groups raised alarm that the lack of OCC leadership has “effectively closed the office.”

“For the first time in the OCC’s history, it cannot take any action to fulfill its mission of reviewing allegations of misconduct,” the groups wrote in a letter to House members on Monday.

Some lawmakers and outside groups have long called for a complete ban on congressional stock trading, even before the OCC was limited. They argue that the \$200 penalty for disclosing a trade late isn’t enough to dissuade lawmakers from trying to obscure shady stock trades.

“What we’re advocating for, they should not own individual stocks at all,” Payne said in an interview.

Payne and other ethics advocates say past examples of late filings, with little or no repercussions, offer evidence that the current requirements fall short.

Sen. Rand Paul (R-Ky.) disclosed a year later stock purchases his wife made in February 2020 of Gilead Sciences, which made a treatment for COVID-19 that proved lucrative for the company.

Payne’s group filed a complaint about the tardy filing with the Senate Ethics Committee. He says nothing came of it.

Seeking a ban

The bipartisan lawmakers agitating for an all-out ban failed to get a vote on their legislation scheduled under former Speaker Nancy Pelosi (D-Calif.), an active trader, and later under ex-Speaker Kevin McCarthy (R-Calif.), who said he'd beef up the rules but failed to do so before he was ousted in 2023.

Johnson hasn't taken a public position on the issue. But he hasn't personally reported any stock trades.

McGehee, who lobbied in support of the creation of the Office of Congressional Ethics, said Republicans' opposition has grown to the ethics watchdog.

"Republicans view concern about ethics rules as impediments to enacting the Trump agenda," she said.

Some of the House GOP's most vocal hardliners do support a ban, though. The issue attracts strange bedfellows: hard-right Republicans like Reps. Tim Burchett (R-Tenn.) and Eli Crane (R-Ariz.) and moderate Rep. Mike Lawler (R-N.Y.) joined Democrats across the ideological spectrum to co-sponsor a ban (H.R.1679) last Congress.

The issue is popping up already in Senate and House midterm races.

"The court that matters is the court of public opinion," Levin said, predicting that members who enrich themselves with non-public information will lose their constituents' trust.

Sen. Jon Ossoff (D-Ga.) jumped on stock disclosures in a recent campaign email. He touted his support for legislation to ban lawmakers from trading stock in individual companies.

"There's renewed momentum building to finally get this done," Ossoff's appeal said.

Greg Giroux in Washington also contributed to this story.

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Greene Bought Market Dip Before Trump Paused Tariffs, Profiting From the Rally

[nytimes.com/2025/04/14/us/politics/marjorie-taylor-greene-bought-stock-trump-tariffs-pause.html](https://www.nytimes.com/2025/04/14/us/politics/marjorie-taylor-greene-bought-stock-trump-tariffs-pause.html)

Annie Karni

April 14, 2025

The Georgia congresswoman purchased at least tens of thousands of dollars in stock the day before and the day of President Trump's pause of a sweeping set of tariffs that sent the market soaring.



Representative Marjorie Taylor Greene, Republican of Georgia, speaking to reporters after a congressional hearing at the Capitol last month. Credit...Anna Rose Layden for The New York Times

Representative Marjorie Taylor Greene, Republican of Georgia, disclosed on Monday that she had purchased between tens and hundreds of thousands of dollars' worth of stock on April 8 and 9, the day before and the day of President Trump's announcement that he was pausing a sweeping set of global tariffs, a pivot that sent the stock market soaring out of a sizable slump.

Ms. Greene bought between about \$21,000 and \$315,000 in stocks on those days. The day before Mr. Trump's move, she also dumped between \$50,000 and \$100,000 in Treasury bills, according to required public disclosures made to the House.

The report came as Democrats in Congress have demanded investigations of whether the president's whipsawing moves on trade might have been aimed at manipulating the market and giving his allies a lucrative opportunity for insider trading.

Members of Congress are required to report their stock trades within 30 days of making them, though they only have to mark down broad ranges rather than specific dollar amounts. Ms. Greene's April 8 and 9 trades — 21 each in the range of \$1,001 to \$15,000 — are some of the first among members of Congress that will be reported over the coming month as lawmakers detail their financial moves around the time the president encouraged people to buy the dip ahead of his pause on tariffs.

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"THIS IS A GREAT TIME TO BUY!!!" Mr. Trump wrote on social media the morning of April 9. About four hours later, he said he was pausing most tariffs on every country except China, an announcement that resulted in massive one-day gains in stocks.

Ms. Greene, one of Mr. Trump's most loyal allies in the House and an active stock trader, appeared to heed the advice, making an unusually large volume of stock purchases. That day, she bought stock in several companies, including Apple, which has since gone up in value by about 5 percent. She also bought stock in other technology companies, as well as energy firms such as Devon Energy Corporation and the pharmaceutical giant Merck & Company, according to her public disclosures.

The day before, she purchased stock in Palantir, whose value has since gone up 19 percent, and in Advanced Micro Devices, Inc., whose stock has since risen 21 percent. She also sold the Treasury bills as government bond yields were rising amid the tariff chaos, (Ms. Greene had previously purchased up to \$500,000 in Treasuries before April 2, when Mr. Trump announced his most expansive tariffs to date.)

Ms. Greene, who is the chairwoman of the DOGE subcommittee of the House Oversight Committee, did not respond to a request for comment. When her stock trades were examined in the past, she told The Atlanta-Journal Constitution that she relies on a financial

adviser to trade on her behalf and does not have input on which companies are being traded, or when.

Lawmakers in both parties have long championed legislation to ban individual stock trading by members of Congress as a way to appeal to growing populist sentiment among constituents.

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The tumult in the stock market caused by Mr. Trump's erratic moves on tariffs has led Democrats to question who is gaining financially because of it. Ms. Greene is not alone in appearing to have capitalized on the market volatility.

Representative Rob Bresnahan, a Pennsylvania Republican who has emerged as one of the most active stock traders in the freshman class despite saying during his campaign that he wanted to ban congressional stock trading, also appears to have profited from Mr. Trump's tariffs.

Mr. Bresnahan sold up to \$50,000 in Alibaba stock on March 4, the same day Mr. Trump doubled the tariff on Chinese imports to 20 percent. Alibaba is an e-commerce giant with close ties to the Chinese Communist Party. The stock price rose by about 30 percent between Mr. Bresnahan's initial purchase and his final sale.

A spokeswoman for Mr. Bresnahan said that he relies on a financial adviser to trade stocks for him, and never knows about the trades before they happen or when they occur. The Alibaba trade, she said, was part of a larger strategic stock package. When it was reported in his disclosure, Mr. Bresnahan's team put in guardrails so that he would not be able to trade that stock again.

While there has been no evidence of insider trading, Democrats have zeroed in on the potential for malfeasance as a way to attack Mr. Trump's tariff moves and suggest that he and his friends are exploiting decisions that have hurt ordinary people.

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Representative Hakeem Jeffries of New York, the top House Democrat, called for a ban on stock trades for members of Congress after the disclosure of Ms. Greene's trading. "Until we get to that point," Mr. Jeffries said on MSNBC on Monday evening, "we obviously have to continue to highlight why this is problematic."

A group of Democrats, led by Senators Adam Schiff of California and Ruben Gallego of Arizona, demanded in a letter last week that Paul Atkins, the chairman of the Securities and Exchange Commission, open an investigation to determine whether Mr. Trump or any "insiders" had engaged in insider trading or other securities laws violations.

“It is unconscionable that as American families are concerned about their financial security during this economic crisis entirely manufactured by the president, insiders may have actively profited from the market volatility and potentially perpetrated financial fraud on the American public,” they wrote.

Separately, Representative Alexandria Ocasio-Cortez, Democrat of New York, wrote in a fund-raising appeal on Friday that “any member of Congress who purchased stocks in the last 48 hours should probably disclose that now,” after Nasdaq call volume spiked ahead of Mr. Trump’s announcement. Ms. Ocasio-Cortez has been a longtime proponent of legislation to ban stock trading for members of Congress.

Chris Cameron contributed reporting.

Securities Law Prof Blog

 lawprofessors.typepad.com/securities/2025/04/new-securities-law-articles-in-print-1.html

Tuesday, April 15, 2025

New Securities Law Articles in Print

The following law review articles relating to securities regulation are now available in paper format:

Carol Goforth, *The Securities and Exchange Commission and Cryptoassets: A Study in Irony*, 87 Alb. L. Rev. 55 (2023).

Carol R. Goforth, *SEC v. Ripple Labs: A Ripple or a Wave?*, 71 Drake L. Rev. 501 (2024).

Edward Lee, *The Original Public Meaning of Investment Contract*, 58 UC Davis L. Rev. 667 (2024).

Francesco Paolo Patti, *The European MiCA Regulation: A New Era for Initial Coin Offerings*, 55 Geo. J. Int'l L. 387 (2024).

Jacob E. Simmons, Note, *Reconciling Disjunct Cryptocurrency Securities Enforcement with Purchaser Expectations*, 47 Seattle U. L. Rev. 1745 (2024).

Julia Sullivan, Note, *Penny-Wise but Not Pound-Foolish: The Second Circuit Limits the Scope of Scheme Liability for Securities Fraud in SEC v. Rio Tinto PLC*, 69 Vill. L. Rev. 847 (2024).

J.W. Verret, *Disgorgement Accounting after Liu v. SEC in Securities Enforcement Cases*, 87 Alb. L. Rev. 285 (2023).

Emily Winston, *An Unlikely Romance: The United States and Intermediated Markets*, 58 U. Rich. L. Rev. 793 (2024).

Judge criticizes 9th Circuit's own arbitration doctrine in subscription case

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Litigation & Arbitration,

9th U.S. Circuit Court of Appeals

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Apr. 16, 2025

A circuit panel on Tuesday upheld a ruling denying arbitration in a class action over automatic subscription fees -- but the authoring judge also called for reversing the precedent he was bound to follow.



9th Circuit Judge Ryan D. Nelson

A 9th U.S. Circuit Court of Appeals panel on Tuesday affirmed a San Francisco judge's ruling denying a website's motion to compel individual arbitration in a putative class action by several consumers who said they did not realize they were obligated to pay a recurring monthly subscription under its terms of service.

But 9th Circuit Judge Ryan D. Nelson, an appointee of President Donald Trump who wrote the decision affirming U.S. District Judge James Donato that cited a 2022 9th Circuit case, also wrote a concurring opinion saying 9th Circuit judges "have committed to an erroneous doctrinal path" and argued that the notice was visually conspicuous.

The question in the case concerns whether San Francisco-based JustAnswer LLC - which offers people answers from subject matter experts for between \$1 to \$5 - violated the federal Electronic Funds Transfer Act and several state laws, including California's - by automatically enrolling them in a recurring monthly subscription that cost between \$46 to \$60 per month.

Nelson affirmed Donato's ruling that denied JustAnswer LLC's motion to compel arbitration by citing a ruling by former 9th Circuit Judge Paul J. Watford.

"Some Plaintiffs were presented with advisals that were insufficiently conspicuous to put them on inquiry notice," Nelson wrote in his main opinion. "Others weren't explicitly advised of what actions would be taken to signal assent to contractual terms. Thus, as we conclude

below, no Plaintiff agreed to arbitrate a claim." *Godun et al. v. JustAnswer LLC*, 2025 DJDAR 3118 (9th Circ., filed April 4, 2024).

Nelson's affirmance cited a ruling by former 9th Circuit Judge Paul J. Watford that has since divided judges on the 9th Circuit and prompted a split, he wrote, with the 2nd U.S. Circuit Court of Appeals.

"Website users are entitled to assume that important provisions - such as those that disclose the existence of proposed contractual terms - will be prominently displayed, not buried in fine print," Watford wrote for the panel. "The designer of the webpages at issue here did not take that obligation to heart." *Berman et al. v. Freedom Financial Network LLC et al.*, 30 F.4th 849, 856-57 (9th Circ., filed Oct. 1, 2020).

That decision followed a ruling a year before by California's 4th District Court of Appeal against another motion to compel arbitration by JustAnswer. *Sellers et al. v. JustAnswer LLC*, 73 Cal. App. 5th 444 (2021).

Nelson, in his concurring opinion, said the 9th Circuit got it wrong in *Berman*, saying that his JustAnswer decision should be reconsidered, in part because he didn't think the plaintiffs who said they didn't see the underlined link to the company website's terms of service were being "reasonably prudent."

"We got it wrong, the Second Circuit got it right [in a 2012 decision], and we should pivot to follow its lead by revisiting *Berman's* explicit advisement rule," he added.

Dominic E. Draye, a shareholder with Greenberg Traurig LLP who represents JustAnswer and argued the company's appeal, could not be reached for comment about whether his client would seek en banc review of the panel decision. The company also did not return phone or email messages.

Mark R. Sigmon of Milberg Coleman Bryson Phillips Grossman PLLC, who represents the putative class, also could not be reached Tuesday.

9th Circuit Judge Sandra S. Ikuta and Senior 9th Circuit Judge Richard A. Paez concurred with Nelson's affirmance.

#384893

Ken Abbarno of DiCello Levitt on Learning to Navigate Jurors' 'Lived Experiences' Via Focus Groups

 [law.com/litigationdaily/2025/04/14/ken-abbarno-of-dicello-levitt-on-learning-to-navigate-jurors-lived-experiences-via-focus-groups](https://www.law.com/litigationdaily/2025/04/14/ken-abbarno-of-dicello-levitt-on-learning-to-navigate-jurors-lived-experiences-via-focus-groups)

Ross Todd

April 14, 2025

Ken Abbarno of DiCello Levitt, the co-leader of the trial center the firm formally launched last year, says it's important for trial lawyers to "get away from the abstract."

Admittedly, that's a bit of an abstract concept in and of itself.

So last week, when I caught up with Abbarno, whose trial center team conducted 70 focus groups with nearly 1,000 participants last year, he came ready with an example.

"I got up this morning and I felt a little stiff," he told me.

"What did you hear when I just told you 'I got up this morning and I felt a little stiff'?" he asked.

As someone with chronic, nagging lower back issues, my mind quickly went to my own back.

But what I didn't know is that Abbarno tore his Achilles tendon about a decade ago. He has some scar tissue at the base of his left calf and it takes him a while to get moving in the mornings. Abbarno said that when he and his colleagues prepare witnesses to testify, they're trying to account for associations like the one I made with stiffness and my back.

How would Abbarno put it differently if asked to testify about his own injury?

"I woke up and, like most mornings ... my leg would hurt a little bit. It was a little stiff because it's tight, and it takes me about 10 or 12 steps before I really can get that going," he said.

"We've learned that it's important to strip away the abstract, because everybody comes to it with a different ... lived experience."

Last week, I spoke with Abbarno about the trial center, which has facilities in Cleveland and Chicago and a staff dedicated to bringing in focus groups for both the firm's clients and other law firms to test cases at different steps in the litigation process.

The following has been edited for length and clarity.

Litigation Daily: What is a trial center focus group going to look like? What are you trying to get out of the process?

Ken Abbarno: What we are trying to get out of the process is driven by what the needs are of the people who have asked for the focus group.

I'll give you some examples. We may focus group a case before it's filed to see how the facts resonate with jurors to determine if it should be filed. Some cases can be so big that you wonder: "Should I take the risk? I have the damages. Can I make a liability case?"

So many lawyers get intoxicated with the damages on a thin liability case. What we try to do is—rather than end up \$100,000 deep in expenses—run a couple days of focus groups to see if real-life people are seeing it as we see it from a liability perspective. Strip the damages away. Let's see what they're thinking liability-wise.

Once a case is filed, the focus can be on messaging. It could be mining the name of the company to see what people think about the company. So I'll give you a real-life example of that. In December, we were down in Florida doing focus grouping related to a case we have against a gig economy company to try to see what real-life people were thinking about that company. Oh my gosh, we found out things that people think about this company that we never even thought of. So it helped tailor our discovery in the case. It helped tailor other ways that we were going to approach the defendant. So we can do it for messaging, theming and data mining for purposes of deposition preparation.

We can do it to prepare for mediation. We can also do it for purposes of trial. And each of them will have a slightly different, nuanced approach in terms of both how it starts and how it ends. If we're preparing a case for trial, we can largely focus on voir dire—spotting people based upon how they respond to questions and then how they ultimately decide the case. Can we find a set of questions to mine what people think about certain issues? Some of them are going to be political. Some are going to be personal. What do they think about lawsuits? What do they do with their time? And then you can track that person at the end and say: "This person answered yes to these five questions, and they found for the plaintiff. These people answered the questions the other way, and they found for the defendant."

You can try to find out what people's lived experiences are, what their thoughts are, and then analyze that along with their decision. Now, when picking a jury, you can chart people. You can ask the same questions to these prospective jurors and grade them, and have a really good idea, potentially, of what they might look like if they're sitting on your jury.

For a mediation-style focus group, we may take a little bit of a different approach. We may ask them for their individualized responses so that we can have certain information that we can convey to the other side in a mediation. The goal of a mediation-style focus group is different from the goal of a trial-based focus group. The goal of a trial-based focus group is to

find out how real-life jurors may decide this case. The goal of a mediation-style focus group is finding information from these jurors—in terms of what they think about the facts—that you can then deliver to the other side to get them to think differently about the case.

When we do a mediation-style focus group, it's not geared toward educating the mediator, per se. It's not geared toward the defense lawyer. It's geared toward educating the insurance representative or the self-insured company: What can I do to help them learn?

Having been a defense lawyer, I saw how the defense side does focus groups. Some say you can get a focus group to say anything you want. And you know what? I agree with them 100%. You could steer a decision any way you want. But we don't steer decisions. We use unrefuted facts as part of our presentation. Every fact we put on a slide that we read to the jurors in our focus groups is a fact-based statement from a witness or from a document. What we don't do is say: "The defense counsel says X about Y. The plaintiffs counsel says Y about Z." What we say is: "Witness A says this. Witness B says this. This document says this."

We don't matter as lawyers. What we've learned over time is what happens when a lawyer stands up and starts talking to a jury and tells a jury what's important and why they need to listen to this "very important fact," what goes through a jury's mind is: "How is it not important? How is it not true? And how can I show him that he's not right?"

When we do our focus group presentations in preparation for trial, what we actually show the jury there, in large part, becomes our opening statement—non-argument, unrefuted facts—and we read it. What we have actually learned from taking this practice in the focus group world and converting it into trials is that when we start reading the PowerPoint presentation, we don't matter in trial. The facts on the screen are what matter. And [jurors] do not walk away with the same distrust of us when we start reading from the PowerPoint, because it's not our words, it's the words up there on the screen.

So it sounds like your trial philosophy informs the focus grouping to a certain extent, with a very fact-based teaching of the case, rather than being the Gregory Peck-style passionate advocate.

Yes, exactly. What we try to do is we package it. We want to teach people how to teach jurors about the case. And how we do that is not by telling the jury "this fact means X." What we've learned by listening to our focus group participants is that 10 different people can hear a fact 10 different ways, because they each bring their own lived experience to that moment. It has to swirl around in their brain and be bounced off of other facts in the case, so that they can then come to a conclusion about what is or isn't.

Let me give you an example. **Bobby [DiCello]** and I were doing a focus group in a case a couple of years ago. It was a medical malpractice case. And we were asking: "Why didn't they take this person to the CT scanner?" If you take the person to the CT scanner, you're going to find out what's wrong.

For the first set of focus groups, we said: "Here's the CT scanner. Here's what it does. Here's what it shows." And we said it two or three times in the focus group. But then the jurors said: "Why did you keep telling us there was a CT scanner there?"

So we went back. We retooled it. It was more in-depth than this, but what we essentially came to was saying: "Okay, there's a radiology department, and within the radiology department, there's an X-ray machine that does this, a CT scanner does this, and an MRI that does this. The patient had this condition. The X-ray can diagnose this. CT can diagnose that. The MRI can diagnose this. This patient had the following symptoms." And then the jurors came up with the question: "Why did they send them to the X-ray machine? They should have just sent them to the CT scanner."

What we learned there is we were trying to drive them. We didn't even realize we were driving them down the road of telling them that a CT scan needed to be done. But just by listening to them, we were like, "Whoa. They needed to hear all the options, not just one option." And then they decided which option was the best.

Well, I'd probably have to take years to catch up on the neuroscience underlying this approach. But is there something that Bobby and you have learned that backs up what you do here? Is it as simple as everybody learns differently?

Partially. But people also want to be able to make the easiest decision possible in the quickest way possible. So are you calling me on your cell phone?

Yes.

So you're calling me on your computer, right? You need an answer. How quickly can you get it?

Very quickly.

People want to make decisions really quickly, and one of the ways they do that is they have heuristics or shortcuts or things that derail the case. This fact allows me to go right into the gutter. Okay, if I hear this fact, boom, it's done. We try to identify what shortcuts jurors hear that gutter-ball the case. I have a case involving cardiovascular disease and somebody died. You know what you're going to hear about? My client who was a smoker. Of course, he died of cardiovascular disease. Jurors don't want to hear anything beyond smoking. How do I get beyond smoking? How do I break through that shortcut? They developed cancer. They

smoked. Of course, they got cancer because they smoked. Well, it wasn't even lung cancer. In a case where a driver was going 62 miles per hour in a 55 mile per hour zone, and then somebody pulled out in front of him and an accident happened. The person was speeding. Boom. Shortcut.

How do I get around those moments in the case, or those facts that allow the jury to decide as quickly as talking into your phone and having an AI-generated response? We have to identify those heuristics or those shortcuts that jurors take to get to a decision. And that's what takes the testing. That's what takes showing the presentation, listening to what they say, analyzing what's happening at the end of the day, what facts allowed a person to find against the plaintiff, charting them and figuring out how to rework those facts in the presentation so that maybe in the next set of focus groups, they're not taking that shortcut.

I'm going to imagine it's not necessarily easy to find that "gutter ball" fact, but it's easier than finding the route around having that fact send things into the gutter.

Yes. ... The goal of these focus groups isn't to win. Our goal in these focus groups, ironically, is to see how we lose.

Critical Mass With Law.com's Amanda Bronstad: A 'Virtual Rally' Calls on Legal Community to Defend Judges, Ex-Girardi Keese Accountant Gets 10 Years in Prison

 [law.com/2025/04/16/critical-mass-with-lawcoms-amanda-bronstad-a-virtual-rally-calls-on-legal-community-to-defend-judges-ex-girardi-keese-accountant-gets-10-years-in-prison](https://www.law.com/2025/04/16/critical-mass-with-lawcoms-amanda-bronstad-a-virtual-rally-calls-on-legal-community-to-defend-judges-ex-girardi-keese-accountant-gets-10-years-in-prison)

Amanda Bronstad

April 16, 2025

Ken Feinberg of Feinberg Law Offices. Courtesy photo

🕒 6 minute read

Welcome to **Law.com Class Actions: Critical Mass**, a weekly briefing for class action and mass tort attorneys.

This week: Judges at a “virtual rally” on Tuesday called on the legal community to speak up against increasing **attacks against the judiciary**. The former head of accounting at **Tom Girardi's** defunct law firm was sentenced to 10 years in federal prison. Who represents the manufacturer of **BioZorb** surgical markers hit with a growing number of lawsuits by breast cancer patients?

I'm . Feel free to reach out to me with your input. My email is abronstad@alm.com. Follow me on [LinkedIn](#) or X: [@abronstadlaw](#).

Paul Kiesel, of Kiesel Law in Beverly Hills, California. Courtesy photo

'You Need to be Champions of Justice'

Constitutional law expert [Erwin Chemerinsky](#) (**UC Berkeley Law**) and mass tort mediator **Ken Feinberg** were among five speakers at a “virtual rally” for the legal profession, calling on lawyers and retired judges, and the general public, to speak up against attacks against the judiciary.

Tuesday's event, dubbed [Stand Up For Justice](#), attracted 7,000 registered attendees, according to the organizer, mass tort plaintiffs' attorney [Paul Kiesel](#) (**Kiesel Law**). Although no one mentioned **Donald Trump** by name, the president's remarks, and those of some Republican lawmakers, have targeted judges whose rulings they disagree with.

Among the speakers at the rally was [U.S. District Judge Esther Salas](#), whose son was killed in 2020 when a gunman arrived at her door posing as a FedEx delivery person. Hundreds of pizzas have been delivered to the homes of other judges, and their children, some in her son's name.

"To the lawyers and retired judges joining us, we need you to be champions of justice, to speak when active members of the judiciary cannot," she said. "We need you to come forward and be our voice when we're being unfairly attacked."

The event also featured California Court of Appeal Associate Justice Eileen Moore and retired U.S. District Judge Paul Grimm (Duke Law School). Kiesel, who is planning more events in the coming months, told me he wanted Tuesday's rally to be the start of an "ongoing dialogue." He decided to organize the event after witnessing silence in the legal community following Trump's executive orders targeting law firms, such as **Perkins Coie** and **Paul Weiss**. He told me:

"Nobody was speaking out, no one was discussing the rule of law. Paul Weiss was the first to fold, and no one was really speaking up. And Perkins had the fatwa against them, and some firms stepped up to help. I felt the legal community was not responding vocally, and it needed to."

U.S. District Judge Josephine Staton. Credit: Joe Barnet via Wikimedia Commons

'Lost in All the Glitz and Glamour'

The former head of accounting at **Tom Girardi's** law firm, **Girardi Keese**, was sentenced on April 11 to more than 10 years in federal prison.

During an emotional two-hour hearing, **U.S. District Judge Josephine Staton**, who imposed the sentence of 121 months, told **Christopher Kamon**, 51, that his actions had "catastrophically injured" the firm's clients. She also ordered him to pay more than \$8.9 million in restitution.

The prison term was in line with the low end of the sentencing guidelines and what federal prosecutors had argued for.

Kamon was head of Girardi Keese's accounting department from 2004 to 2020, when the firm collapsed. He pleaded guilty last year to two counts of wire fraud, one of which was tied to Girardi's alleged embezzlement of \$15 million in client settlement funds.

Girardi, 85, who suffers from dementia, was convicted last year of four counts of wire fraud and faces a May 8 hearing on whether he should serve his anticipated sentence in a prison or a medical facility.

In a letter prior to the hearing, Kamon wrote:

"I trusted Mr. Girardi and believed in him and I did not want to see or believe that he was stealing from his clients. Although now I clearly see the wrong, at the time I was only doing what he instructed me to do. Mr. Girardi had a unique business model, using himself, life,

and his image to promote his business rather than utilizing traditional advertising and unfortunately, I let myself get caught up and lost in all the glitz and glamour. No words can say how sorry I am, and there is nothing in my life I have been more sorry for."

American medical devices company Hologic, Inc.'s Sunnyvale, CA office. Credit: Tada Images/Adobe Stock

Who Got the Work?

Nearly a dozen lawsuits have been filed over allegedly defective **BioZorb** markers, according to **Law.com Radar**, and **Arnold & Porter** partners Daniel Pariser and Jocelyn Wiesner are representing the defendant, **Hologic Inc.** The lawsuits allege that breast cancer patients developed surgical complications after being implanted with the markers, which were recalled in 2024 due to device migration and infections. All but one lawsuit was filed in the past month, but, in a 2023 case making similar claims, Arnold & Porter and **Donnelly, Conroy & Gelhaar** partners Pietro Conte and Daniel Tighe have appeared as defense counsel.

Here's what else is happening:

Zantac Verdict: **Boehringer Ingelheim** won another defense verdict in a trial this month involving recalled heartburn medication **Zantac**. An Illinois jury in **Cook County Circuit Court** found on April 9 that the Zantac manufacturer was not liable for plaintiff Vincent Fiduccia's kidney cancer. **King & Spalding** partners Cory Hohnbaum and Rob Friedman represented **Boehringer Ingelheim**, which has obtained six prior defense verdicts or mistrials in other Zantac cases.

Kline Row: Three months after resolving their longstanding feud, **Kline & Specter** and **Thomas Bosworth** are after one another again. On April 8, Kline & Specter filed a motion for contempt, sanctions and damages against Bosworth, who, two days later, accused his former firm of failing to comply with their agreement. Under their stipulation, Bosworth agreed to pay Kline & Specter more than \$550,000 in costs on a case he took with him to his new practice, escrow \$1 million to ensure his compliance, and participate in an audit.

Meta Whistleblower: A whistleblower told a Congressional subcommittee last week that **Meta** undermined national security to build an \$18 billion business in China. The April 9 testimony of Sarah Wynn-Williams, who was the global public policy director at Facebook, which is owned by Meta, said China had access to the social media site's users. "As whistleblower Sarah Wynn-Williams testified, Meta deliberately engaged in emotional targeting of teenage users—using that deeply personal data to fuel its advertising revenue," Lexi Hazam (**Lieff Cabraser**) and Previn Warren (**Motley Rice**), co-lead counsel in the social media addiction multidistrict litigation, said in a statement. "This is the exact kind of exploitative, profit-driven design that lies at the core of our case."

'We Need You To Come Forward': Judges Call On Legal Profession To Speak Up Against Attacks

 [law.com/2025/04/15/we-need-you-to-come-forward-judges-call-on-legal-profession-to-speak-up-against-attacks](https://www.law.com/2025/04/15/we-need-you-to-come-forward-judges-call-on-legal-profession-to-speak-up-against-attacks)

Amanda Bronstad

April 15, 2025

What You Need to Know

- Although no one mentioned President Donald Trump by name at the event, which was billed as nonpartisan, the remarks responded to criticisms he and Republican lawmakers have made about judges who have ruled against the administration.
- U.S. District Judge Esther Salas, whose son was killed at her house in 2020 by a gunman posing as a FedEx delivery man, also addressed recent reports about hundreds of pizzas being delivered to other judges at their homes or those of their children.
- Paul Kiesel, who organized the event, which attracted 7,000 attendees, said he was inspired to act after watching the legal community remain silent as Trump's executive orders targeted some of the nation's law firms.

Constitutional law expert Erwin Chemerinsky, mass tort mediator Ken Feinberg and three current and former judges called on members of the bench and bar, and others, to speak up against verbal and physical attacks on the nation's judiciary.

At Tuesday's "virtual rally," called Speak Up For Justice, U.S. District Judge Esther Salas, of the District of New Jersey, likened the attacks to a "bonfire," and "accelerants are being thrown on this fire, and it's burning real hot."

"To the lawyers and retired judges joining us, we need you to be champions of justice, to speak when active members of the judiciary cannot," she said. "We need you to come forward and be our voice when we're being unfairly attacked."

Tuesday's event also included California Associate Justice Eileen Moore, and former U.S. District Judge Paul Grimm, now at Duke University School of Law. Although no one mentioned President Donald Trump by name at the event, which was billed as nonpartisan, the remarks responded to criticisms he and Republican lawmakers have made about judges who have ruled against the administration, calling one a "radical left lunatic" and others "crooked." Many of Tuesday's speakers echoed statements by Chief Justice John Roberts last month [condemning efforts to impeach federal judges](#).

Salas, whose son was killed at her house in 2020 by a gunman posing as a FedEx delivery man, also addressed recent reports about hundreds of pizzas being delivered to other judges at their homes or those of their children.

“And just this past week, we found out that pizzas were being sent to judges and children in the name of Daniel Anderl, my murdered son,” she said. “My husband almost lost his life trying to protect our family, and now Daniel’s name is being weaponized to bring fear to judges and their children.”

Paul Kiesel, of Kiesel Law in Beverly Hills, California, told Law.com he organized the event, which attracted 7,000 attendees, to be the largest-ever virtual rally in the legal community. Kiesel, a personal injury attorney who is former president of the Los Angeles County Bar Association, said he was inspired to act after watching the legal community remain silent as Trump’s executive orders targeted some of the nation’s law firms, such as Perkins Coie and Paul Weiss, because of the cases they pursued. Many have cut deals with the Trump administration.

“Nobody was speaking out, no one was discussing the rule of law,” Kiesel told Law.com. “I felt the legal community was not responding vocally, and it needed to.”

He anticipated more events in the coming months and, on Tuesday, encouraged attendees to attend upcoming rallies on May 1, which is Law Day, in cities including New York, Philadelphia, San Francisco, Austin and Washington D.C.

“We have to continue to build this momentum, because if we don’t, we are at risk of losing our judicial system,” he told Law.com.

‘Shed Some Light, And Not Some Heat’

Chemerinsky, dean of the University of California Berkeley School of Law, who last month spoke out about increasing presidential power weakening congressional and judicial oversight, told Tuesday’s attendees, “Let us now emphatically speak up for justice.”

Ken Feinberg of Feinberg Law Offices.
Courtesy photo

Feinberg explained how the rule of law came into play when he served as administrator of the 9/11 victim compensation fund, which was challenged in court. He also referenced the U.S. Supreme Court’s 5-4 ruling in *Bush v. Gore*, which ended the 2020 vote dispute, ratifying the election of President George W. Bush.

“And what was the result of that vote?” Feinberg said. “There were not riots in the street. There were not mobs surrounding the Supreme Court. There was no violence. There were no physical threats. And that’s because the body politic, the American people, understood

that the rule of law must prevail.”

Grimm, who has encouraged members of the legal profession to speak out against the attacks, offered a civics lesson on how the founders of the United States wanted checks and balances in creating the three branches of government.

“When unfair attacks are made against the judicial system or individual judges, lawyers and bar associations need to react promptly but respectfully, and in a non-partisan fashion, to explain why that attack was unjustified or unwarranted,” he said.

He called on attendees to “shed some light, and not some heat.”

Moore, a combat nurse during the Vietnam War who sits on the California Courts of Appeal, emphasized the need for hundreds of treatment centers in state courts for U.S. veterans. Those centers are staffed by the U.S. Department of Veterans Affairs, which Trump advisor Elon Musk’s Department of Government Efficiency has targeted with layoffs.

“We can hate a war but still love and cherish our warriors,” she said.

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[Securities Law News](#)

April 15, 2025, 12:23 PM PDT; Updated: April 15, 2025, 1:11 PM PDT

Judge Blocks Trump's Executive Order Against Susman Godfrey (1)

A DC federal judge on Tuesday temporarily barred the Trump administration from enforcing an executive order targeting law firm Susman Godfrey.

The ruling halts most of President Donald Trump's April 9 order, which directed agencies to restrict firm employees from accessing federal buildings and threatened Susman Godfrey clients' federal contracts.

Judge Loren AliKhan said the US didn't show the law firm is a national security threat or back up Trump's claims that Susman Godfrey leads efforts to "weaponize" the legal system and works to "undermine" military effectiveness. The firm showed it is likely to succeed on claims that the order is unconstitutional on free speech and due process grounds, she said.

The decision marks the fourth time, after Perkins Coie, Jenner & Block and WilmerHale, that a judge has blocked a Trump executive order targeting a law firm.

Trump's order is a "vindictive, retaliatory" measure and serves as a "direct assault" on the independence of the judiciary, said Donald Verrilli, a lawyer for Munger, Tolles & Olson who argued before AliKhan on behalf of Susman Godfrey.

Richard Lawson, on behalf of the Justice Department, said the Trump order was not necessarily a sanction or a punishment, and that more time was needed for the administration to issue guidance before the judge could make any determinations.

AliKhan said the order's reference to Susman's election work appeared to be related to the firm's representation of Dominion Voting Systems Inc. in a massive defamation lawsuit against Fox Corp. The media company agreed to pay a \$787.5 million settlement stemming from false claims of a stolen 2020 election. The firm is also pursuing a defamation case against Mike Lindell, a well-known Trump advocate and chief executive officer of MyPillow, on behalf of Dominion.

Trump's order additionally cited Susman's diversity programs for law students. Susman hosts a two-week diversity fellowship for first-year law students and also offers \$3,500 scholarships to first and second year law students of color.

Nine top law firms including Paul Weiss, Kirkland & Ellis, Willkie Farr and Latham & Watkins reached agreements with Trump to provide at least \$940 million worth of pro bono services collectively to avoid executive orders. Some of those firms also resolved Equal Employment Opportunity Commission inquiries into their diversity programs.

The case is *Susman Godfrey v. Executive Office of the President*, D.D.C., 1:25-cv-01107, 4/15/2025.

(Adds judge, lawyer comments in third, fourth and fifth paragraphs.)

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Granting Susman Godfrey A Temporary Restraining Order, Judge Calls Out The Cowardly Biglaw Firms Inking Deals With Trump

A abovethelaw.com/2025/04/granting-susman-godfrey-a-temporary-restraining-order-judge-calls-out-the-cowardly-biglaw-firms-inking-deals-with-trump

<https://www.facebook.com/>

April 16, 2025

Biglaw is 4 for 4. Four times firms have challenged Executive Orders targeting their firms, and, in front of four different judges, have won temporary restraining orders blocking enforcement of the key provisions of the EOs.

The most recent firm to notch this key W in the fight against Donald Trump is Susman Godfrey. Yesterday, Judge Loren AliKhan issued a TRO enjoining sections 1, 3, and 5 of the EO, related to the firm's access to federal buildings and work with contractors. Judge AliKhan pulled exactly zero punches, noting "The executive order specifically targets lawyers because of the clients that they represented. The executive order is based on a personal vendetta against a particular firm. And, frankly, I think the framers of our Constitution would view it as a shocking abuse of power." This language, while forceful, echoes the sentiments of judges Beryl Howell, John Bates and Richard Leon who are overseeing the cases brought by Perkins Coie, Jenner & Block, and WilmerHale against similar EOs.

Judge AliKhan's comments also called out the Biglaw firms bending a knee to Donald Trump to avoid the exact legal fight that Susman is nailing. "Law firms across the country are entering into agreements with the government out of fear that they will be targeted next," she noted. "And while I wish other firms were not capitulating as readily, I admire firms like Susman for standing up and challenging it when this does threaten the very existence of their business," AliKhan said.

Plus she pointed out just how foolhardy the Biglaw deals are, "For the many firms that have entered into agreements with the administration, there's nothing stopping the government from returning to target them in the future." It's a lesson Lando Calrissian had to learn the hard way.

Susman Godfrey provided the following comment on the court victory, noting the import of the legal battle goes beyond the firm, "This fight is bigger and more important than any one firm. Susman Godfrey is fighting this unconstitutional executive order because it infringes on the rights of all Americans and the rule of law. This fight is right, it is just, and we are duty-bound to pursue it. We are grateful the court directly addressed the unconstitutionality of the executive order by recognizing it as a 'shocking abuse of power.'"

Kathryn Rubino is a Senior Editor at Above the Law, host of The Jabot podcast, and co-host of Thinking Like A Lawyer. AtL tipsters are the best, so please connect with her. Feel free to email her with any tips, questions, or comments and follow her on Twitter @Kathryn1 or Mastodon @Kathryn1@mastodon.social.

Big Law Lawyer Resignations Mount as Backlash to Trump Deals Intensifies

 [law.com/nationallawjournal/2025/04/16/big-law-lawyer-resignations-mount-as-backlash-to-trump-deals-intensifies](https://www.law.com/nationallawjournal/2025/04/16/big-law-lawyer-resignations-mount-as-backlash-to-trump-deals-intensifies)

Jack Womack and Amanda O'Brien

April 16, 2025

The White House. Credit: Bob/Adobe Stock.

News

Five law firms, including Latham & Watkins and Kirkland & Ellis, have reached agreements with the Trump administration in recent days.

Law Firm Associates

The original version of this story was published on Law.com

A Latham & Watkins associate has become the latest lawyer to announce their resignation following their firm's decision to make a deal with the Trump administration.

Sam Wong was an energy and infrastructure associate in Latham's Washington, D.C., office.

"Today I resigned from Latham & Watkins because of the firm's decision to capitulate. I had hoped to stay two weeks to transition off my matters, but today is my last day," Wong wrote on LinkedIn.

On April 11, President Donald Trump announced that his administration had reached deals with Latham and four other law firms to provide pro bono work "and other free legal services" in exchange for avoiding any executive action.

Announcing his departure from Latham, Wong shared screenshots of his resignation email, which read: "I fear jumping into the unknown. But I fear more staying and being complicit or participating in this administration's consolidation of power. The biggest victims of which are not would never have been us—the most fortunate and privileged—but those who cannot protect themselves from actual harm."

He added: "Freedom and democracy have always come at a cost; if this is in part mine, I am willing to pay it."

In the past week, junior lawyers and other law firm figures have also resigned from firms such as Willkie Farr & Gallagher, Paul, Weiss, Rifkind, Wharton & Garrison, Kirkland & Ellis, and Simpson Thacher & Bartlett—all of which have made deals with the Trump administration.

Siunik Moradian, an associate in Simpson Thacher's Los Angeles office, announced his decision on LinkedIn, and wrote: "I have decided to move forward in my legal career in a direction that unambiguously opposes the delegitimization of the legal system."

Jacqui Pittman, an investment funds associate in Kirkland's Chicago office, posted on LinkedIn that she had resigned in response to the firm's capitulation to the Trump administration. "I'm sharing this with the hope that there are others who feel similarly but might need to know they are not alone before speaking up," she wrote.

Other lawyers to leave their firms include Joseph Baio, one of the longest-practicing lawyers at Willkie, who announced his exit after Willkie's deal with Trump earlier this month.

Andrew Silberstein, who had been an associate at Willkie for more than four years, also resigned, posting a copy of his resignation email on LinkedIn in which he harshly criticized his firm for making a deal, writing, "The rule of law is clearly under threat. They have come for us, and we did not speak out. Who is next?"

After Skadden reached a preemptive deal with Trump to evade an executive order, three associates resigned from the firm: Rachel Cohen, Thomas Sipp and Brenna Trout Frey.

In announcing his resignation to colleagues, also posted on LinkedIn, Sipp criticized Skadden for making a deal, saying the firm "is on the wrong side of history."

"We are sliding into an autocracy where those in power are above the rule of law," he wrote. "Skadden's agreement with the Trump administration sent our country deeper down this descent."

Steven Banks, the pro bono practice leader at Paul Weiss and former commissioner of the New York City Department of Social Services, resigned within weeks of that firm's agreement with the president.

"At this historical moment, I know that I belong back on the front lines fighting for the things that I have believed in since I first walked in the door of The Legal Aid Society as a staff attorney in 1981," Banks said in a statement. "This has been weighing on me since the November election."

While some firms have opted to push back against the Trump administration's actions against them, including Perkins Coie, Jenner & Block, Wilmer Cutler Pickering Hale and Dorr, and Susman Godfrey, they are outnumbered by a greater number that have decided to settle with the White House in recent days.

In internal memos to their staff, several of which were obtained by Law.com, law firm leaders have attempted to justify their decisions.

In a memo to its people, A&O Shearman called it a “difficult decision,” but made a distinction between this law firm deal and others.

“It is important to understand that this resolution differs from some of the other recently announced resolutions by law firms—it is a settlement and release of an EEOC employment law inquiry and was not done in response to an Executive Order or the threat of one related to the firm’s representation of clients or association with any persons,” the firm’s leadership wrote April 11. “This is a business decision to resolve a potentially distracting and expensive investigation or litigation on terms that we consider reasonable under the circumstances.”

Meanwhile, Simpson, in an internal memo, cited the EEOC probe and the “growing threat” of executive orders against law firms, adding that the firm “made a strategic decision” to reach an agreement with the Trump administration that would “resolve the EEOC matter and remove any potential threat of an Executive Order against the Firm.”

Lisa Shuchman contributed to this report.

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You Might Like



April 15, 2025

Law Students Sue EEOC Over Law Firm Diversity Disclosures

Why I Signed a Brief Backing Perkins Coie's Challenge to Trump

Column

Columnist Rob Chesnut explains why he joined past and present general counsel in signing an amicus brief supporting law firms suing the Trump administration to block executive orders targeting their practices.

As lawyers, we're used to taking a side in a fight. And I've put my name on a lot of briefs, including briefs where I was representing the United States of America. But when it was my turn to take a side and sign an amicus brief to support law firms that I never worked for or hired, it felt different, more personal, and more urgent than any case I'd ever tried or managed in my 35-year career. No cause has ever seemed so just.

By way of background, I recently wrote that these divisive times we're experiencing are increasingly requiring lawyers to take a side in the widening battle between the Trump administration and the legal profession. The battle has intensified since then—President Donald Trump started issuing executive orders targeting law firms that sued him during his first administration or that participated in investigations of his conduct.

But his attack on Big Law isn't just about retribution—citing “unlawful” diversity, equity, and inclusion practices, he has broadened his attack to include a flurry of executive orders against several other top law firms.

Perkins Coie, WilmerHale, and Jenner & Block, among others, have filed lawsuits challenging Trump, and judges in each of those cases have blocked implementation of part of his order, finding them to be “likely unconstitutional.” Trump doubled down, issuing executive orders against more law firms.

The Justice Department predictably lined up behind him, criticizing the order from an “unelected” federal judge in the Jenner case and suggesting that attorneys in the department ignore it. As for the largest organization of lawyers in the country, the American Bar Association? The White House dismissed it as “snooty” and “leftist.” Meanwhile, the Justice Department has issued a directive forbidding its attorneys from participating in ABA events.

Trump knows that the most formidable barrier to his agenda is the legal profession and an independent judiciary. His goal is not only to neutralize Big Law, but also to turn it into an instrument to further his objectives.

And it's working. Fearful of his ire, several big law firms have quickly entered into settlement agreements, agreeing to provide cumulatively nearly a billion dollars in pro bono work for the administration's causes. In return, the administration has agreed to drop "probes" into the firms' past DEI practices.

Trump now has more than a formidable legal war chest where the firms will do his bidding—he has their souls.

In the wake of these events, I was approached to sign an amicus brief in the Perkins Coie, WilmerHale, and Jenner & Block cases. The brief, signed by a total of 67 former and current in-house counsel, discusses how the executive orders targeting big law firms have an intimidating effect on business and a company's right to counsel of choice. These orders infuse what should be a legal business decision with fear and political calculations and undermine our entire system of justice.

As a former general counsel, I can see that these executive orders are wrong. I suspect most of the legal profession, whether targeted yet or not, sees it just as clearly. And when you encounter wrong in your orbit, you have a simple choice. You can appease it, you can turn away and say nothing, or you can speak up. That's it. Choose a side.

I felt compelled to speak up and sign the brief, as silence and appeasement are complicit with the wrongdoing itself. It's one thing for retired general counsel to speak up, but quite another for so many still actively practicing law.

I applaud my colleagues who are active general counsel for joining, and for their companies who agreed to take on the risk and support this challenge. And I applaud the courage of lawyers in other private firms who have independently banded together to file their own amicus brief representing the interests of law firms who haven't yet been targeted. You might be battling the government, but you won't be battling your conscience.

If you're a law firm, you may be faced with interesting choices in the coming weeks, as Trump's broadside on big law firms gathers steam, and he works his way down the list. The firms that capitulate may feel that settling is the right thing to do financially or to attract future government business.

As each firm comes forward to kneel and settle, it becomes harder for those who remain. But those firms that fight here will be doing more than just standing up for their own right—they'll be ensuring that there is a legal profession independent from the executive branch that isn't afraid to stand up and challenge the government when appropriate. And that's what our constitutional system needs now.

If you're in-house, you may not be free to speak out directly. But you do have an interesting choice when deciding who to hire when defending yourself or raising challenges to governmental action.

Should you hire a law firm that might be “in favor” with the government? Does it buy you immunity or a better settlement offer? Does that firm’s favor come with a price, even a conflict of interest, that might cause them to think twice before zealously representing your position against the government to which they are beholden?

Or do you hire a firm that fights the Trump administration, knowing that you and the firm will get no favors in the litigation—and may face the specter of a government primed to seek sanctions for your taking a position that, in their eyes, is unreasonable?

That’s the real prisoner’s dilemma. And that’s why my name is on the brief.

Rob Chesnut consults on legal and ethical issues and was formerly general counsel and chief ethics officer at Airbnb. He spent more than a decade as a Justice Department prosecutor and he writes on in-house, corporate, and ethics issues.

Read More Good Counsel

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From Harvard to Musk, law firm Quinn Emanuel juggles Trump's friends and foes

 [reuters.com/world/us/harvard-musk-law-firm-quinn-emanuel-juggles-trumps-friends-foes-2025-04-15](https://www.reuters.com/world/us/harvard-musk-law-firm-quinn-emanuel-juggles-trumps-friends-foes-2025-04-15)

Mike Scarcella

April 16, 2025

Item 1 of 2 People walk on the Business School campus of Harvard University in Cambridge, Massachusetts, U.S., April 15, 2025. REUTERS/Faith Ninivaggi/File Photo

[1/2] People walk on the Business School campus of Harvard University in Cambridge, Massachusetts, U.S., April 15, 2025. REUTERS/Faith Ninivaggi/File Photo Purchase Licensing Rights , opens new tab

- Harvard hires lawyers with connections to Trump
- Quinn Emanuel firm is longtime counsel for Elon Musk
- Trump crackdown freezes \$2.3 billion at Harvard

April 15 (Reuters) - Harvard University has turned to Elon Musk's longtime law firm, Quinn Emanuel, and a pair of Washington insiders with strong Republican credentials for its multibillion-dollar fight with the Trump administration over research funding.

Harvard rejected the White House's demands to overhaul its curriculum in a letter on Monday signed by lawyers William Burck of Quinn Emanuel and Robert Hur of rival firm King & Spalding, who both have connections to U.S. President Donald Trump or his allies. Burck and Hur said Harvard "will not surrender its independence" in the administration's crackdown on schools that the White House says allowed antisemitism to flourish during pro-Palestinian protests over the past 18 months.

Harvard is a new client for 1,000-lawyer Quinn Emanuel, according to a person with knowledge of the firm's work for the university, and the assignment again places the firm on one side or the other of a highly contentious Trump-era legal clash.

"Where our clients need us to be on Trump's side, we are going to be on Trump's side. Where our clients need to be opposed to Trump, we will be against him," the person said.

Quinn Emanuel has long represented Tesla (TSLA.O) , opens new tab CEO Musk, who donated \$250 million to Trump's campaign, boosted Trump's candidacy on his social media platform X, and is heading the president's efforts to slash the size of the federal government. The firm is separately representing Salvadoran migrant Kilmar Abrego Garcia, who is challenging his deportation to El Salvador in a lawsuit against Trump's administration that reached the U.S. Supreme Court last week.

A judge in Washington on Tuesday warned the Trump administration against "gamesmanship" and said U.S. officials must provide documents and answer questions

under oath about any efforts to secure Abrego Garcia's return.

Quinn Emanuel, whose top partners charge as much as \$3,000 an hour, is representing Abrego Garcia for free, according to the person familiar with the firm's work, but is charging Harvard.

Quinn Emanuel declined to comment. Harvard, King & Spalding and the White House did not immediately respond to requests for comment.

Burck, a former White House lawyer for Republican President George W. Bush, was hired by the Trump Organization in January to advise the company on ethics issues.

He has also represented Steve Bannon and other Trump allies, and last month helped to facilitate an agreement between Trump and the leader of law firm Paul Weiss, who reached a deal to rescind an executive order against the firm.

Trump has issued orders against six different law firms over their ties to his legal and political opponents. Quinn Emanuel and King & Spalding have not been hit with an order so far.

King & Spalding's Hur also has ties to Trump, who nominated him in 2017 to serve as Maryland's U.S. attorney.

Hur was named U.S. special counsel in 2023 to investigate Democratic President Joe Biden's handling of classified documents. In a report last year, Hur declined to pursue charges against Biden for knowingly taking classified documents when he left the vice presidency in 2017.

Companies and other institutions may benefit from choosing lawyers that can be "everywhere at once" and cross ideological lines without compromising their ethical obligations, said Kevin Burke, who led a large firm and now teaches at the University of Southern California's Gould School of Law.

"Client selection isn't political — its practical," said Burke. A firm like Quinn Emanuel is "brought in to win."

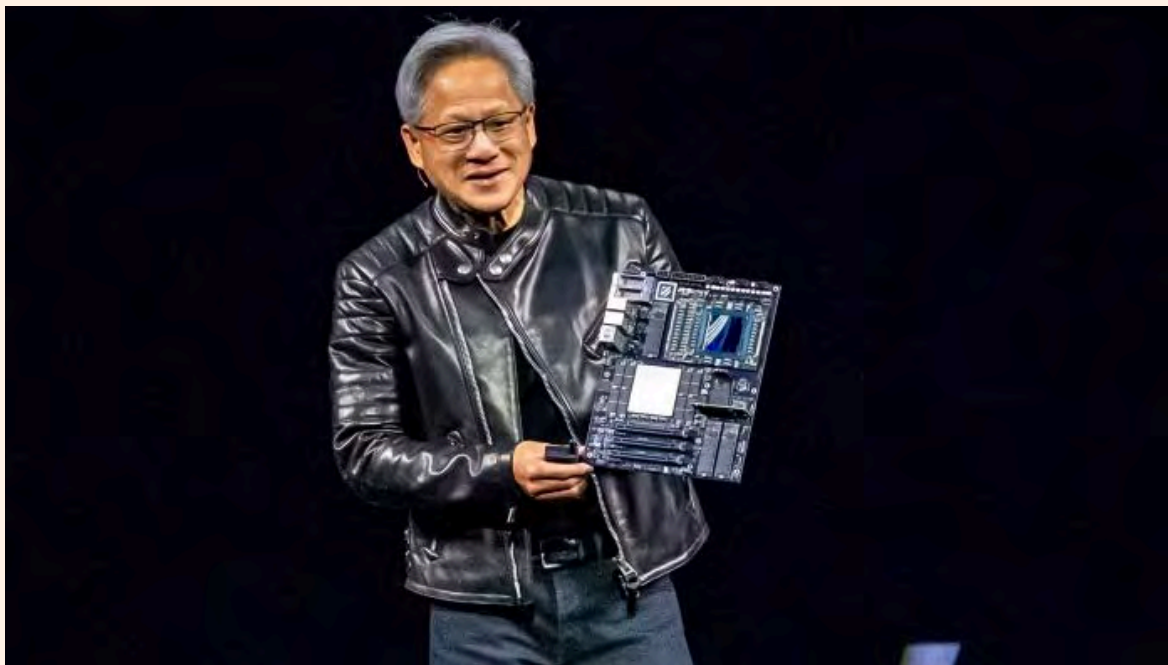
Reporting by Mike Scarcella; Editing by David Bario and Nia Williams

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Nvidia

Nvidia blindsided by Trump's curbs in multibillion-dollar blow to China sales

US chipmaker reveals \$5.5bn impairment, while full hit to China revenues could surpass \$10bn



Jensen Huang's Nvidia was surprised when Donald Trump clamped down on its export of the H2O chip to Chinese clients © David Paul Morris/Bloomberg

Zijing Wu and **Cheng Leng** in Hong Kong and **Michael Acton** in San Francisco

Published AN HOUR AGO



Nvidia has been caught by surprise by Donald Trump's new export controls on its best-selling artificial intelligence chip in China, leaving the chipmaker and its clients to assess the damage caused by the US president's latest salvo in an escalating trade war.

The \$2.7tn semiconductor giant revealed a [\\$5.5bn charge](#) on Tuesday night related to new US controls on its sales to China, while industry insiders believe the hit on Nvidia's revenue could reach more than \$10bn.

The US chipmaker Intel, under chief executive Jensen Huang, told its Chinese clients last week that sales of some of their advanced artificial intelligence processors would start to require a licence, according to a company email reviewed by the Financial Times and people with knowledge of the discussions.

According to two people with knowledge of the situation, Nvidia had thought its H20 graphics processing unit (GPU) — a less powerful version of its AI chips designed to meet Washington's previous export controls — could potentially be exempted from the requirement.

After a meeting with Trump at his Florida residence at Mar-a-Lago earlier this month, Nvidia executives were left with the impression they could escape tougher enforcement of any curbs, the people said, adding the company's plan to invest \$500bn in the US had also impressed the president.

This led Nvidia to tell Chinese clients, including tech giants Alibaba, ByteDance and Tencent, that orders of H20s would not be affected, the people said.

Nvidia was then blindsided as Trump decided to clamp down on the export of H20, a product that Chinese tech groups have [relied upon](#) in their efforts to challenge their global peers to develop large language models.

Frustrated Chinese tech companies have complained about not having enough warning about such a major policy change, but are understanding that the shift is beyond the control of Nvidia, according to the people with knowledge of recent discussions.

AI demand jumped in China after [DeepSeek](#)'s successful launch of its low-cost reasoning model led local companies to put in almost \$17bn orders for H20 chips this year, according to one of the people.

While Nvidia typically takes more than six months to deliver such chips, most of this year's orders from its Chinese clients are yet to be filled and will probably be affected by the latest US restrictions.

The \$5.5bn hit to earnings Nvidia announced are mostly the cost of materials to be used to produce such orders and related penalties and operational costs for not delivering based on agreed terms. The actual affected revenue from China could be more than \$10bn, the person estimated.

China's tech giants are racing to find a replacement to the H20, while Trump's new export controls could significantly help the sales of domestic manufacturers led by Huawei, which has been pushing to produce more AI processors.

It also remains unclear how Chinese groups can apply for a licence to obtain H20s and on what basis would they be issued.

Intel told its Chinese clients last week that chips which would require a licence for exporting to China if they have: a total DRam bandwidth of 1400 gigabytes per second or more; I/O bandwidth of 1100 GB per second or more; or a total of both of 1700 GB per second or more, according to a company email. Intel's Gaudi series as well as Nvidia's H20 far exceed these requirements.

Nvidia declined to comment. Intel, the White House and US commerce department did not immediately respond to requests for comment.

Additional reporting by Demetri Sevastopulo in Washington DC

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Trump Tariffs Leave Accountants Wrestling With Changing Terrain

- Tariff policies could impact key accounting estimates
- Accountants call for consistent judgment, internal safeguards

The Trump administration's tariffs on international imports are set to ripple throughout US companies' financial statements as executives and accountants alike grapple with trade policy whiplash.

Accountants are advising companies to maintain strong financial guardrails and consistent reporting judgment as they assess the tariffs' impact on key economic estimates and gauge whether they need to disclose the significance to investors. Still, ambiguity remains surrounding the future obstacles businesses could face amid unpredictable US trade policy.

Companies started disclosing risks associated with more defensive US trade policy in their annual financial reports even before President Donald Trump announced his sweeping worldwide tariffs on April 2. Coca-Cola Co. and Best Buy Co. Inc. are among firms that flagged the duties as a risk to operations in 10-K reports filed earlier this year.

While some companies including Delta Air Lines Inc. pulled full-year financial guidance due to unknowns surrounding global trade, others such as Albertsons Cos. Inc. have provided annual outlooks that exclude tariffs' impacts.

Uncertainty around tariffs has left accountants to wrestle with "the fact that the information is just changing by the minute," PwC US Chief Accountant Thomas Barbieri told Bloomberg Tax.

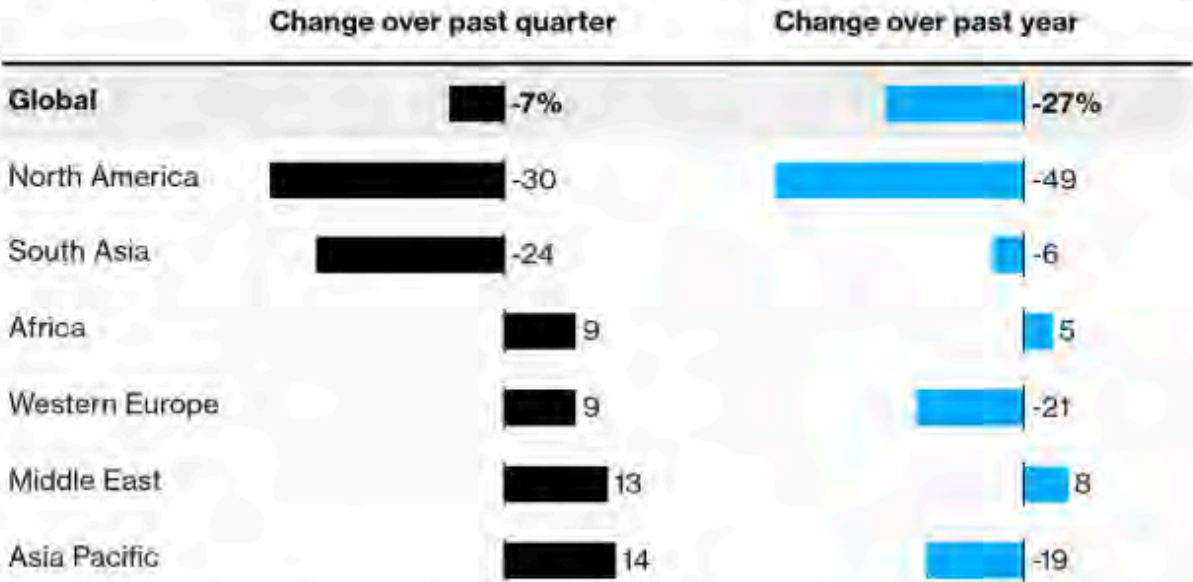
Trump on April 9 announced a 90-day pause on higher tariffs against dozens of countries, just hours after the escalated duties on 56 nations and the European Union took effect.

A 10% baseline tariff on most countries remains—and imports from China face 145% levies, though Trump on April 12 excluded smartphones and computers from some tariffs for now.

Economic volatility has driven accountants globally to their lowest confidence level since the pandemic summer of 2020, according to a recent survey by the Association of Chartered Certified Accountants and Institute of Management Accountants.

Confidence Among Accountants Slips

Accountants were asked about their confidence in the economic prospects facing their organization now compared to three months ago



Source: Q1 2025 Global Economic Conditions Survey by the Association of Chartered Certified Accountants and Institute of Management Accountants
Note: surveying groups cautioned that results for the Middle East, South Asia, and Africa are based on small sample sizes in Q1 2025

Bloomberg Tax

Reporting Estimates

Tariffs could affect key accounting estimates that companies follow when they close their books, Barbieri said. That includes estimates based upon fair value, or the current price products or assets fetch in an orderly market—a dynamic measure influenced by market conditions.

“When you’re figuring out fair value, you need to step into the shoes of how a market participant would think about the impact of tariffs,” he said.

Companies also risk decreased demand for products if they pass on tariff-related costs to customers. This could lead to companies writing down the value of assets, such as equipment, said Brigham Young University associate professor of accounting Brant Christensen.

“If that negative impact on consumer demand is significant enough to decrease sales, then the value of that equipment goes down because it’s producing goods that are no longer being purchased at the same level as before,” he said.

Impaired assets have a lower market value than the one listed on companies’ balance sheets.

Estimating the reduction in economic benefit is “subject to all types of uncertainty and unknowns,” Christensen said.

Barbieri said it’s important for companies to have contemporaneous documentation detailing their reasons for making business judgments—such as passing along subsets of costs to customers—in order to stay internally consistent.

Risk Assessment

Tariffs could trigger a broader range of disclosures depending how they impact companies’ finances.

Companies that may lack sufficient “headroom” in their financial liquidity—the ease at which companies can convert assets to ready cash without affecting market price—could face challenges, Barbieri said.

Severe hits to liquidity may require a business to disclose that there’s substantial doubt about its ability to continue as a going concern, or as a financially stable company able to meet its obligations.

Additionally, the Financial Accounting Standards Board’s ASC 275 directs companies to discuss when it’s possible that estimates could change in the near term and have a material impact. The rules require disclosure of certain concentrations that make businesses vulnerable.

If a company imports all of its raw materials from a country subject to high tariffs, there could be severe financial impacts. US companies’ reliance on purchasing materials from China could bring concentration risks amid escalated duties, said CohnReznick partner Matthew Derba.

Barbieri noted that the marketplace will find it helpful to have specific details from businesses about their judgments. The more companies explain their thinking to investors in financial reports, “the better off you are,” he said.

Internal Guardrails

As companies adapt to the new trade environment, accountants stressed the importance of maintaining strong internal controls, or procedures, for accurate financial reporting and durable fraud prevention.

Tariffs may motivate businesses to reconfigure their supply chains to avoid increased costs. In January, nearly half of Canadian businesses surveyed by KPMG in Canada said they were already reconfiguring their supply chains to divert US-destined exports to third-party countries.

Changing suppliers can introduce numerous risks. If companies don’t conduct proper due diligence processes, “you might associate yourself with a fraudster,” according to Myriam Duguay, a partner and national service line leader for forensics for KPMG in Canada.

While vendor approval processes are standard, economic instability may put additional pressure on companies to circumvent controls in favor of quicker supply chain reconfiguration, BYU's Christensen said. Still, it's important to have careful processes in place to ensure companies aren't working with third parties that fall short of their risk tolerance, he said.

Fraudsters can also meddle in relationships between a company and a new supplier to intercept payments. Conducting supplier background checks and streamlining communications will help companies to deter fraud risks, Duguay said.

PwC's Barbieri advised companies to have an "evergreen process" in place for making reassessments as tariff impacts emerge.

Corporate boards' audit committees can provide helpful expertise, as their members can have past experience navigating uncertainty and market volatility, according to Todd Rahn, senior managing director and co-leader of the SEC and accounting advisory practice at FTI Consulting.

Accountants can bring the "groundedness" to tariff-related discussions as companies stay focused on their mission, he said.

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SEC Pushes Back on DOGE Ask for Access to Some Agency Data (1)

A member of Elon Musk's government efficiency team asked the Securities and Exchange Commission to grant read and write access to some agency data, according to people familiar with the matter.

The data access requested by Eliezer Mishory, who is leading the DOGE team at the SEC, includes staff emails, personnel data, contracts, and payments systems, the people said, speaking under the condition of anonymity.

The SEC, currently led by Acting Chairman **Mark Uyeda**, pushed back on the request, according to the people. It is unclear whether the DOGE team has been granted access to any of the data or why it sought those records.

As the country's lead securities regulator, the SEC maintains a vast repository of sensitive information on ongoing investigations, whistleblower identities, real-time trading records and documents about market participants' strategies.

"The SEC is working with DOGE to find cost efficiencies and ensure public funds are being used as effectively as possible," a spokesperson for the SEC said in an emailed statement. Mishory didn't immediately respond to a request for comment.

The SEC has already made moves to streamline operations, including reorganizing 10 regional offices under broader geographic areas and decreasing the number of people reporting directly to the agency's enforcement director. And at least 500 staffers, or 10% of its workforce, have accepted the government-wide buyout and deferred-resignation offers.

Paul Atkins, a sought-after Washington consultant and a former agency commissioner, has been confirmed as SEC chair by the US Senate but has yet to be sworn-in. During his confirmation hearing, Atkins said he was willing to work with DOGE on "creating efficiencies in the agency."

The SEC charged DOGE's leader, Musk, in January with failing to properly disclose his acquisition of Twitter shares.

Mishory has represented the government efficiency group at the agency since his arrival earlier this month. He previously worked as a top attorney at Kalshi Inc., the prediction market overseen by the Commodity Futures Trading Commission.

(Adds SEC statement and background on previous cuts starting in the fifth paragraph.)

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Whistleblower org says DOGE may have caused 'significant cyber breach' at US labor watchdog

 [reuters.com/technology/cybersecurity/whistleblower-org-says-doge-may-have-caused-significant-cyber-breach-us-labor-2025-04-15](https://www.reuters.com/technology/cybersecurity/whistleblower-org-says-doge-may-have-caused-significant-cyber-breach-us-labor-2025-04-15)

Raphael Satter, A.J. Vicens

April 15, 2025

The seal of the National Labor Relations Board (NLRB) is seen at their headquarters in Washington, D.C., U.S., May 14, 2021. REUTERS/Andrew Kelly/File Photo Purchase Licensing Rights , opens new tab

WASHINGTON, April 15 (Reuters) - A whistleblower complaint says that billionaire Elon Musk's team of technologists may have been responsible for a "significant cybersecurity breach," likely of sensitive case files, at America's federal labor watchdog.

The complaint , opens new tab, addressed to Republican Senate Intelligence Committee Chairman Tom Cotton and his Democratic counterpart Mark Warner and made public Tuesday by the group Whistleblower Aid, draws on the testimony of Daniel Berulis, an information technology staffer at the National Labor Relations Board (NLRB).

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The NLRB, a New Deal-era agency that is tasked with protecting workers' rights to organize and join unions, has for years been a target of America's corporate titans - including Musk - some of whom are now seeking to have the agency's powers declared unconstitutional. In an affidavit, Berulis said he had evidence that DOGE staffers were given extraordinarily sweeping access to the NLRB's systems, which house sensitive case files. He said that beginning in early March, logging protocols created to audit users appeared to have been tampered with, and that he had detected the removal of about 10 gigabytes worth of data from NLRB's network sometime thereafter.

Berulis told Reuters in an interview Tuesday that the data in question includes proprietary business information from competitors, union organization and unfair labor practice respondents and their claims, including private affidavits.

"That kind of spike is extremely unusual because data almost never directly leaves NLRB's databases," Berulis said in his affidavit.

A spokesperson for Musk's team - officially known as U.S. DOGE Service - didn't immediately return a message seeking comment. A message left with the NLRB also wasn't immediately returned, although NPR, which first reported the story , opens new tab, quoted an NLRB spokesperson as disputing Berulis' claims and saying there had been no breach. Cotton and Warner didn't immediately return messages seeking comment.

Berulis alleged in the affidavit that there attempted logins to NLRB systems from an IP address in Russia in the days after DOGE accessed the systems. He told Reuters Tuesday that the attempted logins apparently included correct username and password combinations but were rejected by location-related conditional access policies.

Berulis' affidavit said that an effort by him and his colleague to formally investigate and alert the Cybersecurity and Infrastructure Security Agency (CISA) was disrupted by higher-ups without explanation.

As he and his colleagues prepared to pass information they'd gathered to CISA he received a threatening note taped to the door of his home with photographs of him walking in his neighborhood taken via drone, Andrew Bakaj, Whistleblower Aid's chief legal counsel, said in his submission to Cotton and Warner.

"Unlike any other time previously, there is this fear to speak out because of reprisal," Berulis told Reuters. "We're seeing data that is traditionally safeguarded with the highest standards in the United States government being taken and the people that do try to stop it from happening, the people that are saying no, they're being removed one by one."

Bakaj declined to share the note with Reuters Tuesday. The FBI declined to comment.

A message left with CISA wasn't immediately returned.

Reporting by Raphael Satter; Editing by Aurora Ellis

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- Suggested Topics:
- Cybersecurity

Litigation

April 16, 2025, 7:17 AM PDT

Musk's DOGE Hunts for SEC Cuts but Savings Will Prove Elusive

Deep Dive

- **Government efficiency team has hands tied with SEC's budget**
- **Staffing cuts expected even after hundreds accepted buyouts**

Making drastic cuts to the Securities and Exchange Commission won't save taxpayers a dime. But the Wall Street regulator still finds itself in the crosshairs of Elon Musk's Department of Government Efficiency as scores of employees head for the exits.

A DOGE team arrived at the SEC late last month and is being led by Eliezer Mishory, the former chief regulatory officer of derivatives exchange Kalshi Inc., Bloomberg News reported. SEC personnel were directed to treat Musk's emissaries as internal employees "for purposes of network, system, and data access."

The SEC has pushed back on DOGE's request for access to some agency data, Bloomberg News reported, citing people familiar with the matter. Mishory's request reportedly included staff emails, personnel data, contracts, and payments systems.

But the Musk-run outfit will be particularly hard-pressed to point to any savings from its efforts to downsize the SEC, which has its spending levels set by lawmakers—around \$2.2 billion for this year—and recoups the money through fees on the securities industry.

"They're going to want to look for some kind of receipt, but I don't think they're really going to find it there because the taxpayers are not directly funding the SEC's budget; it's really coming out of the fees they collect from the industry," said Jim Toes, the president and CEO of the Security Traders Association. "I just don't think there's a ton of fat."

For Musk, the money may be beside the point. The multibillionaire has had an ax to grind with the SEC since his 2018 agreement to install an in-house lawyer to preapprove his social media posts about Tesla Inc. ("The Shortseller Enrichment Commission is doing incredible work," Musk said in a post at the time.)

One of the SEC attorneys who led a subsequent case against Musk, Robin Andrews, is among the hundreds of employees who have now left the agency. The SEC shed more than 10% of its roughly 5,000 employees through \$50,000 buyout and deferred-resignation offers in recent months.

While slashing the SEC's workforce won't generate savings, it may jeopardize the agency's ability to keep pace with the industries it oversees, including the \$26 trillion private funds market and the "Wild West" of crypto, according to its most recent budget request, submitted during the Biden administration.

"Capital markets regulation is incredibly complex," said Jill E. Fisch, a professor at University of Pennsylvania's Carey Law School who teaches corporate and securities law. "A lot of the senior staff at the SEC have been there a long time and developed a tremendous amount of knowledge, and the agency will not run as effectively without them."

'Streamlining,' Not a 'Chainsaw'

The SEC's enforcement unit is in line for more cuts as incoming chairman Paul Atkins, confirmed by the Senate on April 9, is expected to steer the agency away from the aggressive enforcement favored by predecessor Gary Gensler.

But any major overhaul led by Atkins or DOGE comes at a risky time, as securities markets undergo a tumultuous stretch alongside news of President Donald Trump's tariffs.

"Acting too precipitously with the regulators of the financial markets could have an adverse impact on the markets, so my expectation would be that they would take a lighter touch," said Frank Zarb, a partner at Proskauer Rose LLP and SEC alum who concentrates on federal securities regulatory matters. "I would use the word 'streamlining'; the words 'chainsaw' and 'dismantling' are not what I would use in this context."

Atkins is likely to bring his own ideas to the table for making the agency more efficient, given his own background at the SEC as a former commissioner, Zarb added.

"One of his goals will be to avoid enforcement cases in grey areas, what some have called 'regulation through enforcement,'" he said. "If you do that, by definition, you may be paring back on the scope of what the enforcement division is doing in some areas."

That may mean more cuts to enforcement staffing, after the agency already took steps to scale back its local footprint by eliminating regional director roles and canceling office leases in Los Angeles and Philadelphia.

'Disruptive' Changes

DOGE's arrival at the agency also carries special significance for Musk, who is still the subject of a Biden-era SEC suit over disclosures surrounding his acquisition of Twitter in 2022.

Republican Commissioner Mark Uyeda, who still serves as acting SEC chairman until Atkins is sworn in, asked enforcement staff members in January to declare that the case wasn't politically motivated, Bloomberg News reported at the time, citing people familiar with the matter.

The SEC ultimately sued Musk after the enforcement team declined to comply with Uyeda's request. The agency alleged the multibillionaire waited too long to disclose his growing stake in the social media company while preparing his takeover bid, cheating shareholders out of more than \$150 million.

Andrews, one of the enforcement attorneys who handled the case, decided to leave this month "after weeks of excruciating deliberation," he said in a LinkedIn post.

Those who remain at the SEC might find themselves subject to DOGE-led cuts or reassigned as part of a streamlining agenda under Atkins.

"The amount of people that are going to be leaving is going to be more than what we've seen in the past decade or so," Toes said. "It's going to be a little more disruptive."

If the SEC is spared the same extreme cuts that other agencies have endured under the Trump administration, its track record for spending effectively and breaking even by offsetting its budget may be part of the reason.

"It has a reputation as an agency that is pretty efficient and nimble already," Zarb said.

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Tesla's quarterly EV registrations slump 15% in key market California

 [reuters.com/business/autos-transportation/teslas-first-quarter-registrations-california-fell-15-industry-data-shows-2025-04-16](https://www.reuters.com/business/autos-transportation/teslas-first-quarter-registrations-california-fell-15-industry-data-shows-2025-04-16)

Akash Sriram

April 16, 2025

The logo of Tesla adorns a Tesla Super Charging station in Saint-Herblain near Nantes, France, March 25, 2025. REUTERS/Stephane Mahe/File Photo Purchase Licensing Rights , opens new tab

April 16 (Reuters) - Tesla's (TSLA.O) , opens new tab electric-vehicle registrations in California dropped 15.1% during the first quarter, industry data showed, signaling an accelerated decline and growing challenges for the Elon Musk-led automaker in its biggest U.S. market.

In California, often viewed as a bellwether for EV trends, Tesla's share has fallen to 43.9% from 55.5% a year earlier, while brands such as Honda (7267.T) , opens new tab, Ford (F.N) , opens new tab and GM's (GM.N) , opens new tab Chevrolet have grown their footprint, according to the California New Car Dealers Association (CNCDA).

Overall zero-emission vehicle sales in the state also rose 7.3% during the same period.

"An aging product lineup and backlash against Musk's political initiatives are likely key factors for the decline in Tesla BEV market share," the industry body said.

The company reported earlier this month its first-quarter sales globally fell 13% to the lowest in nearly three years, hurt by pushback against Musk, rising competition and as customers wait for a refresh of its bestselling Model Y.

The billionaire's leadership of the Trump administration's Department of Government Efficiency has sparked widespread protests across the United States, with activists demonstrating against his role in federal workforce cuts and the cancellation of contracts funding global humanitarian programs.

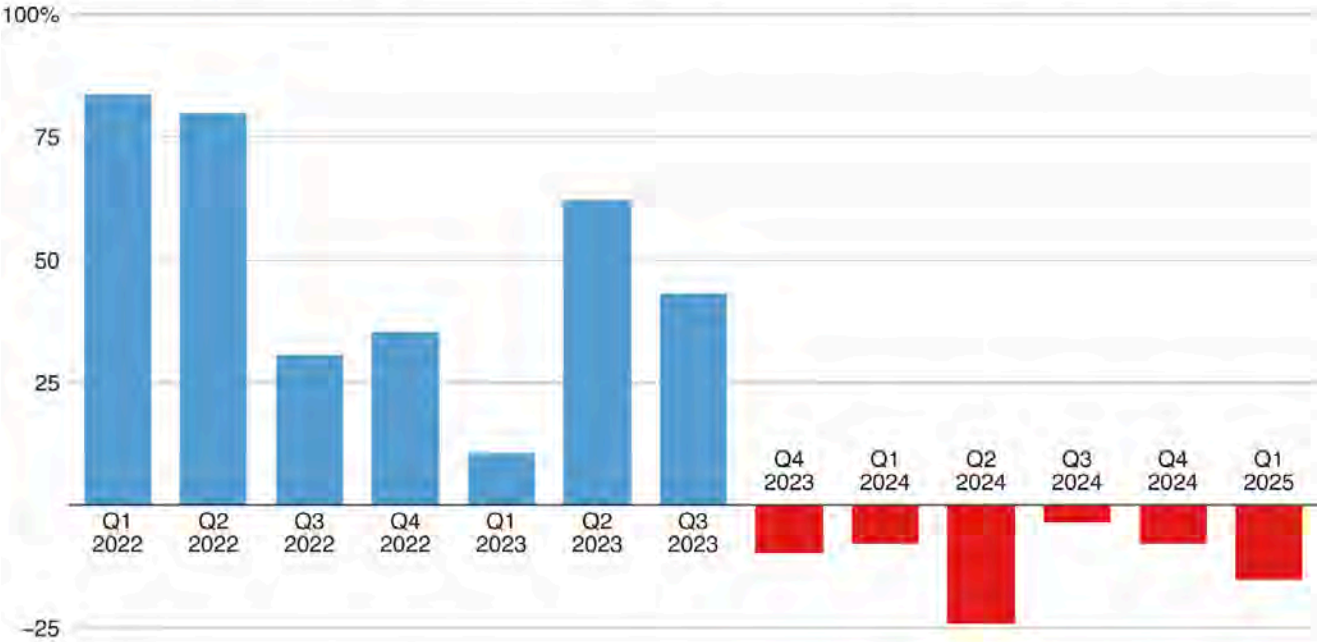
Musk's popularity has been declining among liberal voters, who have traditionally been more inclined to purchase electric vehicles, particularly in environmentally conscious markets such as California.

California accounts for nearly a third of Tesla's sales in the U.S., according to Reuters calculations based on data from Cox Automotive and the California New Car Dealers Association.

The CNCDA also expects new vehicle registrations in the state to fall 2.3% from last year due to U.S. trade policies.

Tesla's California registrations fall for sixth straight quarter

Damage to the EV maker's brand, customers waiting for the refreshed Model Y were likely reasons, analysts say



By Akash Sriram
Source: California New Car Dealers Association

Tesla's California registrations fall for sixth straight quarter

MODEL Y SNAGS

While the Model Y remained the best-selling EV in the state, its sales plummeted about 30% in the first quarter, compared with a year earlier.

Tesla said earlier this month that retooling production lines for the refreshed Model Y at four of its factories resulted in several weeks of lost production during the first quarter.

00:14US retail sales powered by pre-emptive buying ahead of tariffs
Meanwhile, analysts attributed some of the drop in overall sales in the January-March period to customers waiting for cheaper versions of the refreshed Model Y crossover.

Investors will be closely watching Tesla's earnings report on Tuesday for indications of whether the company will maintain its annual growth forecast despite the challenging quarter.

Reporting by Akash Sriram in Bengaluru; Editing by Shounak Dasgupta and Devika Syamnath

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- Suggested Topics:
- Autos & Transportation
- ADAS, AV & Safety
- Sustainable & EV Supply Chain
- EV Battery

Akash reports on technology companies in the United States, electric vehicle companies, and the space industry. His reporting usually appears in the Autos & Transportation and Technology sections. He has a postgraduate degree in Conflict, Development, and Security from the University of Leeds. Akash's interests include music, football (soccer), and Formula 1.

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<https://www.wsj.com/politics/elon-musk-children-mothers-ashley-st-clair-grimes-dc7ba05c>

The Tactics Elon Musk Uses to Manage His 'Legion' of Babies—and Their Mothers

The world's richest man juggles more than a dozen children and 'harem drama' along with running his companies and advising Trump. He recently took a paternity test in a battle with one woman over money and privacy.

By [Dana Mattioli](#) [Follow](#)

April 15, 2025 9:00 pm ET

Ashley St. Clair wanted to prove that [Elon Musk](#) was the father of her newborn baby.

But to ask the billionaire to take a paternity test, the right-wing social-media influencer had to go through Musk's longtime fixer, Jared Birchall.

"I don't want my son to feel like he's a secret," St. Clair told Birchall in a two-hour phone call in December.

Birchall offered St. Clair some advice. His boss was a "very big-hearted, kind and generous person," he said. But Musk had a different side. When a mother of his child goes "the legal route" in these discussions, "that always, always leads to a worse outcome for that woman than what it would have been otherwise," Birchall told the 26-year-old. Plus, he said, Musk wasn't sure the child was his.

It wasn't the first such conversation for Birchall. His public job is running Musk's family office, and he recently helped organize Musk's more than \$250 million push in support of [Donald Trump's](#) election.

Behind the scenes, Birchall also manages the financial and privacy deals Musk wants for the women raising the world's richest man's babies.

Musk has had at least 14 children with four women, including the pop musician Grimes and [Shivon Zilis, an executive at his brain computer company Neuralink](#). Multiple sources close to the tech entrepreneur said they believe the true number of Musk's children is much higher than publicly known.

Musk offered St. Clair \$15 million and \$100,000 a month in support in exchange for her silence about the child, whom they named Romulus. Similar agreements had been negotiated with other mothers of Musk's children, Birchall told St. Clair.

The fight with St. Clair over the terms of the deal for their baby has been going on as Musk has assumed [one of the most influential roles](#) in the U.S. government.

As a top adviser to President Trump, he has been slashing staff and [billions of dollars from the federal government](#) as the head of the Department of Government Efficiency, with massive benefit programs such as Social Security, Medicaid and Medicare in the crosshairs.



President Trump acknowledged Musk after SpaceX's successful crewed rocket launch in 2020. PHOTO: JOE RAEDLE/GETTY IMAGES



Jared Birchall, shown in 2019, runs Musk's family office and also manages the financial and privacy deals for women who have Musk's children. PHOTO: PATRICK T. FALLON/BLOOMBERG

Musk's baby-making project is [relevant to his ambition for NASA](#), which he wants to move faster to go to Mars. He said on X that making people multiplanetary is "[critical to ensuring the long-term survival of humanity and all life as we know it.](#)"

In Musk's dark view of the world, civilization is [under threat because of a declining population](#). He is driven to correct the historic moment by helping seed the earth with more human beings of high intelligence, according to people familiar with the matter.

His businesses are set up to serve the idea: The main objective of SpaceX is to build a rocket ship capable of getting to Mars, and his other companies, including electric-car maker [Tesla](#), help finance the plan.

Musk refers to his offspring as a "legion," a reference to the ancient military units that could contain thousands of soldiers and were key to extending the reach of the Roman Empire.

During St. Clair's pregnancy, Musk suggested that they bring in other women to have even more of their children faster. "To reach legion-level before the apocalypse," he said to St. Clair in a text message viewed by The Wall Street Journal, "we will need to use surrogates."

He has recruited potential mothers on his social-media platform X, according to some of the people.

Musk has used his wealth to buy the silence of some women who have his kids, according to St. Clair as well as other people, text messages and documents reviewed by the Journal.

Nondisclosure clauses are part of some of the payment agreements. If the mothers push back or seek outside counsel, Musk's advisers, including Birchall, have threatened financial retribution, according to the documents and people.

Birchall described Musk's expectations to St. Clair: "Privacy and confidentiality is the top of the list in every aspect of his life, every aspect, and his entire world is set up to be, like, a meritocracy." Benefits flow, he said, when "people do good work."

During the call with Birchall, St. Clair told him she had received outreach from a woman Musk had invited to have his baby. She said she was being caught up in Musk's "harem drama."



Musk in the Oval Office with his son X in February. PHOTO: AARON SCHWARTZ/CNP/ZUMA PRESS

The details of Musk's baby mission are only now starting to spill into the public. Grimes begged Musk in February for help on X when one of their children was having a "medical crisis" because Musk wouldn't engage with her. Earlier that month, after their 4-year-old son, also called X, had been on national television on his father's shoulders as he talked about government cuts in the Oval Office, Grimes posted that "he should not be in public like this."

A person familiar with Musk's thinking on the agreements with the mothers of his children said that Musk believes it is better to resolve these matters behind closed doors for the safety and security of the child.

'Make new humans'

Musk [has warned](#) that "civilization is going to crumble" if people don't start having more children, a view popularized as pronatalism in right-wing circles. The pronatalism movement is composed of people concerned about the birthrate and eager to implement policy and cultural solutions to the problem.

Martin Varsavsky, a friend of Musk's who founded a large chain of in vitro fertilization clinics in the U.S., said he has spoken with Musk about the risks of falling birthrates.

"Without babies there's no future, every problem becomes secondary to the problem of not having people on the planet," said Varsavsky. "Elon believes that a country is not the geography, a country is the people."



Musk on screen at an investment conference in Saudi Arabia in 2024. PHOTO: HAMAD I MOHAMMED/REUTERS

Speaking to an audience at an investment conference in Saudi Arabia last year, Musk laid out the urgency of the matter. “I think for most countries, they should view the birthrate as the single biggest problem they need to solve. If you don’t make new humans, there’s no humanity, and all the policies in the world don’t matter,” Musk told the crowd over a live video.

When the interviewer joked that Musk was doing his part to address the issue, the billionaire agreed. “Yes. I am. I mean, you know, you’ve got to walk the talk. So, I do have a lot of kids, and I encourage others to have lots of kids.”

Separately, Musk has said he is concerned about what he called Third World countries having higher birthrates than the U.S. and Europe, a person familiar with the conversation said.

One of the most important ways to change these dynamics, he has repeatedly told people close to him, is for educated people to have more children.

In 2023, he had a meeting in Austin where people he described as Japanese officials asked him to be a sperm donor for a high-profile woman, according to a text message reviewed by the Journal. “They want me to be a sperm donor. No romance or anything, just sperm,” he texted St. Clair. Musk later told her he gave his sperm to the person who asked for it, without naming the woman.

Special status

Vivian Wilson, one of Musk’s older children from his first wife, Justine Musk, said recently to Teen Vogue that she doesn’t know how many half-siblings she has in her family. Musk is now estranged

from Vivian because he refuses to accept her identity as transgender. Justine Musk had six children with Musk, but one child died as a baby.

Grimes, whose legal name is Claire Boucher, has three young children with Musk. She and Musk went through a custody battle but settled in August.

Musk offered his sperm to Zilis, and the two have four young children together. Zilis is viewed as a steadying force in Musk's life and is the most prominent of Musk's mothers.

"He really wants smart people to have kids, so he encouraged me to," Zilis told Musk's biographer Walter Isaacson.

The Yale University graduate was a founding member of the investment team at Bloomberg Beta, and made Forbes's "30 Under 30" venture capital list in 2015. Zilis also was a board member at OpenAI and worked at Tesla earlier in her career.

Two people close to Musk described her as having "special status," meaning Musk chooses to spend time at her home in Austin as well as bringing her to high-profile public events.



Musk and Shvonne Zilis with Jared Kushner, Ivanka Trump and Jeff Bezos in January. Musk and Zilis met with Indian Prime Minister Narendra Modi in February with three of Musk's children.

EVAN VUCCI/AP; INDIA MINISTRY OF INFORMATION/ZUMA PRESS

In January, Zilis attended a black tie pre-inauguration candlelit dinner with Musk, and was photographed speaking to Ivanka Trump, Jared Kushner, Amazon founder [Jeff Bezos](#) and his fiancée, Lauren Sánchez.

Weeks later, she was alongside Musk for a meeting with India's Prime Minister Narendra Modi at Blair House, the presidential guesthouse across the street from the White House, with two of their children and another of Musk's in tow.

'Pick a name'

While Musk posts sometimes dozens of times a day on X about right-wing politics or his companies, among other things on his mind, he often interacts with lesser-known users. He replies to them and sometimes interacts through direct messages, some of whom he eventually solicits to have his babies, according to people who have viewed the messages.

Cryptocurrency influencer Tiffany Fong was covering disgraced crypto tycoon Sam Bankman-Fried's downfall when Musk started liking and replying to her posts. Musk's interactions ramped up as Fong posted more political content in support of Trump, and Musk followed her last summer.

That sort of attention from Musk on X, where he has 219 million followers, sent droves of followers to Fong, which was a financial boon. More engagement meant more earnings for her as part of a revenue-sharing program for creators on X.



Musk's following was a financial boon for Tiffany Fong.

During the height of her interactions with the billionaire owner, Fong earned \$21,000 on the platform in a two-week period in November, according to a screenshot she posted.

That was about when Musk sent her a direct message asking if she was interested in having his child, according to people familiar with the matter. The two had never met in person.

Fong didn't move forward with Musk because she pictured having children in a more traditional nuclear family, but confided to a few friends about the approach—including St. Clair, whom she knew as another conservative social-media figure—and how she worried that turning him down could hurt her earnings.

Once Musk learned that Fong disclosed the request to others, he chided her for not using discretion, according to the people, and unfollowed her. That contributed to a fall in her engagement, and her earnings declined.

St. Clair and Musk had met earlier, in the spring of 2023, after Musk began interacting with the influencer's posts on X and followed her account. Soon after, they were exchanging direct messages before Musk invited her to visit the social-media platform's San Francisco office, and then the relationship turned romantic.

Musk invited St. Clair, who had been an operations manager at a conservative media company that owns The Babylon Bee, onto his private plane for a trip to Rhode Island where he was visiting one of his sons at college.

The first time they had sex, Musk joked that they should "pick a name" for their future child. He frequently talked to her about having children, she said. It was months later on a New Year's trip to St. Barts, that she told him that she was ovulating. He asked her "what are we waiting for?" and the two conceived their son on that trip, St. Clair said.

Being in his circle brought with it access to a constant stream of texts, particularly about his growing involvement in Trump's election.

Before Musk publicly supported Trump, he texted her, "I can't be President, but I can help Trump defeat Biden and I will." In one text before Trump picked a running mate, viewed by the Journal, Musk asked St. Clair what she thought about Tulsi Gabbard as a vice presidential candidate, saying that in interviews she says "the right anti-establishment words."

While Musk was in Pennsylvania canvassing for Trump before the election, Musk sent a series of texts about the urgency of winning the state to St. Clair. "In all of history, there has never been a competitive army composed of women. Not even once," he wrote. "Men are made for war. Real men, anyway." He followed up with: "I am in full war mode. Going to the front lines today. Must win PA."

Protecting Elon

In the December phone call, Birchall told St. Clair that his job was to "protect Elon." He told her that he has been happily married to the same woman, but he has "been very involved in family law courts, very extensively" through his work for Musk. "I feel like I've been through, like, three divorces," he said.



Justine Musk, shown in 2022. Musk's former wife had six children with him. PHOTO: SPLASH NEWS/SHUTTERSTOCK

Birchall worked in finance before becoming one of the top consiglieres in Musk's orbit. Musk recruited him from Morgan Stanley's private wealth management group, where he was part of a small team managing the businessman's money.

The two men couldn't be more different on the surface: Birchall is a practicing Mormon with a large family who works hard to keep a low profile.

Birchall's formal responsibilities are wide ranging, from disbursing funds for Musk's super PAC to assembling the team that helped Musk take Twitter private. His role as intermediary between Musk and some of the mothers happens in the background.

Musk often has Birchall step in to handle negotiations with the women over arrangements for the pregnancy and financial support after. The arrangements play out in similar ways for the different women, according to a document and people familiar with the matter.

Birchall was involved in acquiring the property for a compound in Austin where Musk imagined the women and his growing number of babies would all live among multiple residences, according to a person familiar with the matter. He is involved in other property deals across Musk's different businesses.

Zilis lives in the gated community with their children, and Musk comes and goes. Musk also attempted to get Grimes to move to the compound, but she refused. Similarly, he tried to get St. Clair to spend some time in Austin "with our kid legion," according to a text he sent her.

Birchall said on the December call with St. Clair the NDAs are necessary. "We have been through way too many issues where, to not sign some agreement associated with handing over 15-plus million dollars is absolutely insane and irresponsible, and because we have dealt with some very unstable, mentally unstable, people that all of a sudden misremember things," he said.

He added that his boss "cannot allow people to just go and share his life information. He is the biggest lightning rod on the entire planet."

When Birchall told St. Clair that other mothers signed similar secrecy agreements, she observed that they didn't seem happy. Zilis, Birchall said, "goes in and out of finding contentment" but Grimes wasn't "ever going to find true happiness."

'I want to knock you up again'

Grimes claimed on X that her court battle with Musk over custody of their three children bankrupted her and that she had "a fraction of [Musk's] resources (or iq/ strategy experience)" to navigate the family court system.

Musk had sued Grimes in 2023 in Texas to establish the "parent-child relationship," and Grimes countersued in California for primary physical custody.



Grimes, left, arrived for a custody hearing at an Austin court last year. PHOTO: USA TODAY NETWORK/REUTERS

She alleged that Musk kept one of their children from her for five months and that, during court proceedings, Musk's team dug up parts of her past to portray her as a bad mother. The two had dated in 2018 before having kids.

Birchall featured prominently in Musk's fight with Grimes, acting as a go-between for various negotiations between the musician and Musk. Birchall was also present in the Austin courtroom during their court fight. The case has been resolved and is now sealed. Grimes and Musk alternate weeks with the children, according to people familiar with the matter.

St. Clair had a front-row seat to the custody battle, since she was dating Musk at the time and he updated her on the deliberations.

A year later, she was in her own fight with Musk.

After becoming pregnant with their son, St. Clair and Musk's relationship progressed with Musk sending her flowers on her birthday and Mother's Day. St. Clair's toddler from a prior relationship had playdates with Musk's young children, and she and the toddler met Musk's mother, Maye.

At one point St. Clair had a [custom-made black "Make America Great Again" hat](#) with Gothic style font made for Musk, a twist on the bright red cap. Musk wore it everywhere, even referencing it in stump speeches for Trump during the election. In November, Musk responded to a selfie she texted him saying: "I want to knock you up again."



Musk, holding X, attended a Trump campaign event at New York's Madison Square Garden last year with his mother, Maye Musk, left, and Melania Trump. PHOTO: ALEX BRANDON/ASSOCIATED PRESS

While she was pregnant, Musk had urged her to deliver the baby via caesarean section and told her he didn't want the child to be circumcised. (Musk has posted on X that vaginal births limit brain size and that C-sections allow for larger brains.) St. Clair is Jewish and circumcisions are an important ritual in the religion, and she decided against a C-section. He told her she should have 10 babies, and they debated the child's middle name.

Once she became visibly pregnant, she mostly stayed inside her apartment so the pregnancy wouldn't become public, she said. During her pregnancy, Musk instructed Birchall to send St. Clair \$2 million for expenses, she said, with half of that amount structured as a loan, according to a text message viewed by the Journal. She used the funds in part to pay for security, which came to more than \$100,000 a month, she said.

When she was in the hospital being induced for labor in September, Birchall texted her about leaving Musk's name off the birth certificate, according to texts viewed by the Journal. Shortly before, she had hired an attorney, something Birchall had warned her not to do.

She complied with the request to not name Musk on the birth certificate. Not long after the birth, Birchall pushed St. Clair to sign documents keeping the father of the baby and details regarding her relationship with Musk secret in return for financial support. The offer was a one-time fee of \$15 million for a home and living expenses, plus an additional \$100,000 a month until the baby turned 21.

Musk told her by text it was dangerous to reveal his relationship to the baby, describing himself as the "#2 after Trump for assassination." He added that "only the paranoid survive."

But she didn't sign. The agreement prevented her from speaking about Musk in relation to the child or disparaging him, but didn't bar Musk from speaking negatively about her if he wanted. St. Clair would have to pay back the \$15 million lump sum if she broke the agreement.

One of the main sticking points, she said, was that it would make her son feel illegitimate. The agreement didn't provide support for their child if he became gravely ill or a trust fund or life insurance if Musk died before the child turned 21. The agreement would also not have an allotment for security expenses.



St. Clair told Birchall she was being caught up in Musk's 'harem drama.' PHOTO: SARAH BLESENER FOR WSJ

She also wanted a paternity test. Courts in New York, where St. Clair lives, require the test to sanction child-support agreements, said Karen B. Rosenthal, one of St. Clair's attorneys.

A few times, St. Clair tried to hash things out directly with the billionaire, but she said he ignored her texts. In February, when she learned of a tabloid preparing a story about their relationship, she decided to front-run it and posted about it on X, making everything public for the first time, she said.

“Five months ago, I welcomed a new baby into the world. Elon Musk is the father,” she wrote. “I have not previously disclosed this to protect our child’s privacy and safety, but in recent days it has become clear that tabloid media intends to do so, regardless of the harm it will cause.”

Four days after the post, Musk eliminated the \$15 million fee offer. Then, as they went to court to discuss paternity testing and Musk’s request for a gag order, he lowered the financial offer further, dropping her support to \$40,000 a month, just as her legal fees were set to balloon in the fight.

On Thursday, the Journal contacted Musk for comment for this article. On Friday, St. Clair didn’t receive her scheduled child support payment from Musk, she said. Late on Tuesday, she said Musk’s team sent her \$20,000, halving her stipend again.

“The timing of the reduction in payments from him are timed with disagreements on testing and gag orders. The only conclusion we can make is that money is being weaponized,” said Dror Bikel, another of St. Clair’s attorneys. St. Clair’s legal fees have exceeded \$240,000, Rosenthal said.

The case is working its way through the New York Supreme Court, which ordered that Musk take the paternity test.

On Friday, the results came back. A report from Labcorp stated that the “Probability of Paternity” was 99.9999%.

Write to Dana Mattioli at dana.mattioli@wsj.com

Trump's 'Crypto Capital' Dream Shifts Risk Assessment to States

Eversheds Sutherland attorneys Michael Bahar, Mary Jane Wilson-Bilik, and Alexander Fuchs warn companies that federal deregulation might push states to tighten their laws governing cryptocurrencies.

President Donald Trump's statements that he wants to make the US the "crypto capital" of the world means companies will want to be aware of the emerging regulatory environment that could vary between the US government and the states.

A federal de-prioritization of enforcement doesn't change the timeline on statutes of limitations that can span beyond a single administration. Given the specter of selective enforcement, crypto companies should be wary of an overly headlong approach.

State regulators are expected to ramp up enforcement to fill perceived gaps in US enforcement, especially on consumer protection grounds. Private litigants can ensnare crypto companies in lengthy and expensive litigation, especially after downturns in the crypto markets that cause individuals to lose money.

Assessing and Acting

The Securities and Exchange Commission's position for years has been that digital assets issued on a blockchain may be securities under US securities laws and, if they are securities, issuers who offer or sell them in the US must register the offering and sale or qualify for a registration exemption.

As recently as July 2024, the SEC cautioned crypto companies that just because the *Howey* test (which determines whether an offering is a security) existed before blockchain, it still can apply. A security, the agency says, is "principles-based to allow for the flexibility that comes with innovative investment products, technology-driven or otherwise."

Under Trump, the SEC has demonstrated that it doesn't intend to come after crypto companies with the same zeal it had under prior administrations.

Renaming the SEC's crypto unit to the more general Cyber and Emerging Technology unit likely reflects this federal de-prioritization, and the agency's new Crypto Task Force signals a more permissive federal regulatory environment.

This shift is also reflected in the Department of Justice's decision to scale back the scope of its cryptocurrency cases, moving from the "regulation by prosecution" approach to a limited focus on cases involving terrorism, drug cartels, and investor fraud. As part of this change in focus, the DOJ is disbanding its National Cryptocurrency Enforcement Team.

But administrations come and go—and the *Howey* test has been in force for more than 80 years. Crypto companies should be wary of assuming an endless crypto summer. And de-prioritization doesn't mean there can't be selective enforcement, especially for foreign crypto companies operating in the US.

Individual US states can use their securities and consumer protection laws to bring actions against crypto companies. New York and California have active attorney general offices that rigorously enforce consumer protection and securities laws related to cryptocurrency.

While federal securities laws preempt state securities laws to a degree, it isn't a complete preemption, and it's not difficult to imagine that states will argue against preemption when faced with a lax federal regulatory environment.

Companies should consider where their customers are located. While it may be impractical or impossible to prevent customers in specific states from buying digital assets or using a company's services, being mindful of customers' locations is important to understanding the activities most likely to generate regulatory risk.

It's also important to track how states address regulations themselves. Many states have or are considering crypto-specific laws, including licensing requirements. The shift in federal regulatory focus is likely to intensify the state legislative and administrative activity aimed at the cryptocurrency industry.

Monitoring these developments is key to ensuring a clear understanding of the state regulatory risk companies are likely to face.

Strengthening Legal Protections

A well-drafted and consistently applied set of terms and conditions can be a company's first line of defense to consumer disputes or litigation. It also can greatly aid in a defense of state regulatory scrutiny.

Reviewing the terms and conditions to ensure they're up to date is an important initial step. Those that reflect inaccurate information may be difficult to enforce and can lead to regulatory action or litigation for fraud, deceptive trade practices, and other consumer protection violations.

For companies with multiple product lines, platforms, or subdivisions, ensuring consistency across terms and conditions is critical, as disputes may arise under multiple product offerings, and inconsistencies can create roadblocks to enforcing them.

Terms and conditions that require affirmative user consent generally are easier to enforce than those simply posted online. Companies should ensure user consent of terms and conditions is logged, as proof of consent can be crucial for enforceability.

Companies also should consider whether to include forum selection clauses that designate a specific jurisdiction where disputes should be brought. A forum selection clause can be a useful tool to ensure disputes are heard in jurisdictions that aren't antagonistic to the cryptocurrency industry.

Including arbitration clauses or alternative dispute resolution mechanisms is another prudent step that can shield companies from expensive litigation.

Robust record-keeping and compliance procedures are essential to avoiding regulatory and litigation pitfalls. The worst time to discover gaps in policies and that records are unavailable is when facing a regulatory inquiry or litigation.

To avoid missteps, companies should review record generation and retention policies to ensure they're up to date, adhere to all applicable state and federal requirements, and see that employees are aware of the policies.

Maintaining clear processes for issuing and enforcing legal hold notices in the event of litigation or regulatory inquiries is important to safeguard relevant records.

Preventing Theft, Fraud

Crypto companies handling personal information, including employee data, must navigate and comply with the complex patchwork of federal and state data privacy laws. In some instances, companies may have to comply with state laws, such as the California Consumer Privacy Act, even if they aren't incorporated there.

The decentralized nature of cryptocurrency makes it a prime target for fraud and cybercrime, and all 50 US states have data breach notification laws. Regulators have strict and detailed cybersecurity requirements that can be a burden but that also protect companies.

The risks from private litigation, state-level enforcement, and cybersecurity threats persist, and may even be on an upward trajectory.

Proactive legal strategies can help crypto businesses thrive while protecting against persistent legal and regulatory challenges.

This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law and Bloomberg Tax, or its owners.

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Securities Law

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Trump's World Liberty Signs Crypto Deal With DWF Labs

President Donald Trump's crypto project World Liberty Financial has signed a new partner: A market maker that has been accused in press reports of manipulative trading activity.

Crypto trading house DWF Labs bought \$25 million worth of World Liberty's WLFI tokens in a "strategic private transaction," according to a statement from the company on Wednesday. It also agreed to provide liquidity for the project's upcoming USD1 stablecoin.

"As our partner, we expect DWF Labs to help accelerate the next-generation infrastructure we're actively building and deploying at WLFI," Zak Folkman, co-founder at World Liberty Financial, said in the DWF statement. World Liberty didn't immediately respond to a request for comment.

DWF is based in Dubai, according to the company's LinkedIn page. It's helmed by Andrei Grachev, a former head of crypto exchange HTX's Russian operations. DWF also said it was expanding in the US and opening an office in New York.

Last May, the Wall Street Journal [reported](#) that DWF offered to use its active trading position to drive up the prices of cryptocurrencies and create "artificial volume" on exchanges including Binance that would lure in other traders. The report cited proposals the firm sent to potential clients in 2022. After the Journal article was published, DWF posted on X that "allegations reported in the press are unfounded and distort the facts" and that the firm operates with "the highest standards of integrity, transparency, and ethics."

DWF Labs also faced allegations that one of its senior partners attempted to drug a woman in Hong Kong last year. DWF later said it had dismissed the partner from management and operational roles.

DWF didn't immediately respond to a request for additional comment.

The company is the latest crypto magnate to join World Liberty's investor roster. Justin Sun, a Chinese crypto billionaire who was sued by the US Securities and Exchange Commission in 2023, has invested \$75 million in World Liberty Financial and became an adviser to the project last November. Lawyers for Sun and the SEC requested a [pause](#) in the proceedings earlier this year.

World Liberty had also been engaged in discussions about doing business with crypto exchange Binance Holdings Ltd., Bloomberg News reported in March. Binance founder Changpeng Zhao pleaded guilty in 2023 to anti-money laundering failures that allowed Binance to be used by criminal groups and terrorist organizations, including Hamas.

Read More: [Stablecoin, ETFs, Mining: Trump Family Is Going All-In on Crypto](#)

World Liberty is only one of Trump and his family's crypto endeavors. Other efforts include a collection of nonfungible tokens, a Bitcoin mining partnership and memecoins tied to both Trump and First Lady Melania Trump.

Taken together, the various projects are approaching \$1 billion in paper gains even after accounting for the latest round of trade war-induced market gyrations, according to Bloomberg calculations this month. His son Eric Trump has emphasized that "there are no conflicts" related to the family's crypto investments.

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Dave Liedtka, Michael P. Regan

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Trumps Back Christian Radio Penny Stock, Spurring 283% Rally (1)

President Donald Trump's eldest son and daughter-in-law took a stake in right-wing Christian radio network Salem Media Group Inc., spurring a sharp rally in the stock and involving the family in a market associated with opaque, buyer-beware companies.

Donald Trump Jr. and **Lara Trump** announced Monday that they invested in Salem, a conservative talk-radio network known for circulating a 2020 election fraud conspiracy film. Shares of the company rose 283% on Tuesday to \$1.76.

The move followed a pattern that has become familiar since Trump's election victory. The president's family members announce they have a stake or advisory role in a small, thinly traded company trading like a so-called penny stock. Shares of the company skyrocket after the news is announced — often before dropping back down.



Donald Trump Jr. and Lara Trump

Photographer: Eva Marie Uzcategui/Bloomberg

This was the case for Unusual Machines Inc., a drone company that Trump Jr. joined as an adviser in November; for PSQ Holdings Inc., operator of a marketplace for conservative-values businesses, where Trump Jr. became a director in December; and for Dominari Holdings Inc., a tiny financial firm where Trump Jr. and his brother Eric both took stakes in February.

In the most-recent deal, Salem said it acquired a 30% stake in Trump Jr.'s mobile news aggregation app MxM News, while he agreed to promote the company. Lara Trump, who is married to Eric and was a former co-chair of the Republican National Committee, agreed to continue to host her show "The Right View" on the platform.

A spokesperson for Salem, which announced the arrangement in a press release, called it "a win-win for everyone." Representatives for the Trumps did not respond to requests for comment.

The deal also adds to the Trump family's personal involvement in right-wing media networks.

Trump Jr. hosts a show on conservative streaming platform Rumble Inc. called “Triggered With Don Jr.,” where he featured Secretary of State Marco Rubio and praised his father for “bringing back common sense.” This year Fox News struck a deal for a weekend primetime slot for “My View With Lara Trump,” where she recently championed her father-in-law’s tariff policies as they roiled markets, saying “nations are lining up to negotiate,” and interviewed Commerce Secretary Howard Lutnick, who said the president is “totally in the driver’s seat.”

Salem agreed last year to stop distributing a book and film, *2,000 Mules*, which it co-produced with conservative provocateur and filmmaker **Dinesh D’Souza**. The film was based on a discredited theory about the 2020 election results being stolen. Salem apologized to a Georgia voter it falsely portrayed as committing election fraud.

Salem is different from some of the other companies linked to the Trump family, in that it trades on over-the-counter markets, which lack the centralization, trading volume and transparency of firms listed on the New York Stock Exchange or Nasdaq. Salem delisted from Nasdaq last year, saying it would save costs.

Penny stocks are typically defined as those that trade for less than \$5 per share. Salem’s shares traded at an average of 38 cents for the past year, according to data compiled by Bloomberg.

(Updates with closing share price in second paragraph and company comment in sixth paragraph.)

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Opinion **Financial Thinking**

Why everyone hates dynamic pricing

Consumers are particularly indignant if they suspect an algorithm is to blame for price hikes

JONATHAN GUTHRIE



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Jonathan Guthrie

Published YESTERDAY



Mad for it, I am. I just bought my ticket for the big [Oasis reunion](#) at Wembley in July. It cost me £1,537 on resale site Viagogo.

My seat will be way up behind the stage, so I won't have a great view. But at least I can look down on paupers who only paid around £400 for the last tickets in the standing area.

Another piece of good news: there is no evidence Ticketmaster used an algorithm to stiff fans when it first put tickets on sale last autumn. That is what the Competition and Markets Authority said in [findings](#) last month.

Instead, the ticketing business just charged indignant concert goers an arm and a leg the old-fashioned way, the watchdog reckons. Ticketmaster swiftly sold out of lower-price standing tickets at around [£135 each](#). After that, it charged concert goers, who had been queueing lengthily, up to 2.5 times more without a decent explanation.

OK, to be truthful, though the ticket prices were real enough when I looked them up, I'm not going to see Oasis. They are a great band. And you cannot blame monobrowed Mancs for the adoption of "Wonderwall" as the party piece of a generation of intense young men with acoustic guitars. But these days I prefer a bookshop, a pub lunch and a nap to a rock 'n' roll gig.

I was, however, intrigued by the idea — acknowledged by the CMA — that consumers are particularly indignant about overcharging, when an algorithm is responsible. It reflects a justifiable fear that everything we do is now subject to scrutiny and price gouging by the electronic servants of Mammon.

Programs that tweak prices to reflect demand have been around for decades, notably in the airline industry. In recent years, they have infiltrated other sectors, such as taxis, hotels, consumer goods and theme parks.

[Merlin Entertainments](#), the big visitor attractions business, caused a stir a year ago when it [announced](#) it was introducing "dynamic pricing". It was the last straw for some parents whose holiday cheer was already being tested by the prospect of a long, hot trip to Legoland Windsor with a carload of sprogs tripping on Haribo.

You can interpret "dynamic pricing" however you want. Businesses that deploy the technology argue it is different to "surge pricing" — the distinction being that supposedly the former imposes limits on prices.

Or perhaps it is just that "surge pricing" smacks of a budget airline offering passengers the opportunity to upgrade to Premium VIP (complimentary parachute included) moments after the aircraft has burst into flames.

This is certainly how it can feel when the price of an Uber ride spikes amid rainstorms and train cancellations.

A squint at Legoland's bookings webpage suggests dynamic pricing has had a less-than-revolutionary effect on its own prices. The website quoted a peak Easter holiday price of £43 per person compared with £29 after school term started. For a family of four, that is £56 extra. But vacation season surcharges have always applied in the travel industry.

Premier Inn is a louder, prouder exponent of dynamic pricing. Punters wishing to stay at the hotel closest to Ascot racecourse on the night before the Gold Cup in June were shelling out £272 for a standard room, when I checked. The price dropped to £93 the following Monday.

Legoland savvily categorises its advance, online prices as discounted alternatives to its walk-up prices, in this case £68 per person. I suspect only the most harassed and forgetful of visitors pay on a walk-up basis, presumably blinking back tears as they do so.

It is, meanwhile, a truism of behavioural finance, the subject of these columns, that customers welcome discounts almost as much as they hate surcharges.

In a report last autumn, Consumer Scotland came to the blindingly obvious conclusion that people like dynamic pricing when it gives them an apparent bargain, but hate it when they end up paying top dollar.

Businesses such as Premier Inn and Merlin therefore factor price ceilings into their algorithms. Legoland Windsor prefers to sell out of tickets for Easter Sunday rather than dispose of the last one for £400 and stand accused of surge pricing.

Florian Stahl, professor of marketing at Mannheim University, says a business that imposes no price ceiling is opting "to transact with customers, rather than have a relationship with them".

This certainly seemed to be the ethos of Uber co-founder Travis Kalanick. Ultra-libertarian philosopher Ayn Rand, who saw transactions as preferable to relationships, is popular among tech bros of a cerebral kind.

But as Professor Stahl points out, some consumers are shocked to discover that running shoes available for \$90 on Amazon in the morning may cost \$100 if they postpone the purchase until the afternoon.

Most of us appreciate that prices for goods and services are set by supply and demand. What damages our trust in companies is the suspicion that they may have overcharged us relative to that strict correspondence — or that we bought at nosebleed levels.

Dynamic pricing is becoming ever more prevalent and sophisticated. That leaves businesses with tricky choices to make. Brand-conscious companies will set intelligent ceiling prices and outline policies publicly. Transactional rivals will let the market rip and leave us struggling to navigate it.

It transpires that a computer was not to blame for a champagne supernova in Oasis ticket prices. The jeopardy for business is underlined by the resentful assumption that it was.

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Public Roads, Public Data, Cos. Say Of Drivers' Privacy Claims

By **Jonathan Capriel**

Law360 (April 15, 2025, 6:15 PM EDT) -- General Motors, OnStar and other companies facing multidistrict litigation accusing them of collecting driving data and selling it without user consent have urged a Georgia federal court to dismiss the claims, arguing that driving data is public because driving happens on public roads.

In separate briefs with overlapping arguments, the companies — including LexisNexis Risk Solutions Inc. and Verisk Analytics Inc. — said that the drivers failed to state a claim under the Federal Wiretap Act and that their state law claims are preempted by the Fair Credit Reporting Act, according to filings submitted on Monday.

Another intersection where the four companies met was that the data being collected was not actually confidential. While the GM vehicles were equipped with devices that collected and transmitted their driving data, the companies argued that because the conduct took place on public roads, the plaintiffs can't claim that the activity was in fact private.

"Plaintiffs allege that the driving data was collected from their vehicles as they drove on public roadways," according to a **brief** filed by LexisNexis and Verisk. "Courts consistently hold there is no reasonable expectation of privacy in driving activity on public roads."

"These allegations fail to state viable claims because, among other reasons, GM's collection of driving data was disclosed and consented to, and because driving a vehicle — which necessarily involves conduct that takes place on public roads — cannot form the basis for any privacy-based claim," the automaker and OnStar said in a joint **brief**.

In three separate briefs, the companies asked the court to dismiss the MDL, arguing that the complaint is a "shotgun pleading" and that the drivers have failed to allege harm.

According to the amended master complaint — a 627-page document — GM recorded "billions of miles" of consumer driving data without telling vehicle owners through built-in Telematics Control Units, which are provided by OnStar. The complaint claims the automaker never told the consumers it was collecting such data, and that disclosures about this tracking were buried in the fine print or misleadingly written. The data was continuously collected between 2015 and 2024, according to court records.

While the data collected is "inaccurate, flawed, and materially misleading," that allegedly did not matter to any defendant, including LexisNexis and Verisk, which purchased the data, used it to create "driving scores" and sold that information to insurance companies, according to the complaint.

The companies argue the drivers do not have a case for Federal Wiretap Act violations because the data doesn't actually meet the definition of an "electronic communication" as defined under the federal law.

LexisNexis and Verisk said that a "communication" is content with "substance" or "meaning," which is totally lacking in braking and speed data. GM and OnStar said that communications are meant for others to receive, and the plaintiffs can't argue that they were trying to convey any kind of message to anyone else through their driving, according to the briefs.

The companies also lean on the Fair Credit Reporting Act to dismiss many state law claims. GM and OnStar argue that they are "furnishers," as defined by the act, because they provided the data to credit reporting agencies, specifically LexisNexis and Verisk. The FCRA specifically shields furnishers from additional duties imposed by state law because lawmakers wanted them to give data to credit agencies, the companies argued.

Moreover, under federal law, GM and OnStar argue they didn't have to provide notice or get driver consent before giving the data to LexisNexis and Verisk.

"If consumers could prevent furnishers from reporting accurate, though negative, information, that would undermine Congress's goal of ensuring accurate credit reporting. 'The FCRA simply does not have a consumer "opt-out" provision,'" GM and OnStar said, quoting *Frazier v. TransUnion* , a 2023 ruling from the Eastern District of Pennsylvania. "Plaintiffs' claims premised on notice and consent would undermine Congress's goals; they are therefore preempted."

LexisNexis and Verisk also pointed to the legislatures' "goal" when passing the FCRA to argue that claims against them should be dismissed.

"Plaintiffs' attempt to use state statutory and common law to impose an opt-in requirement on consumer reporting would turn the FCRA's intricate statutory scheme on its head, and essentially allow state law to override Congress's intentional policy choice to not require consumer consent for consumer reporting," they said.

LexisNexis is represented by Ronald I. Raether Jr., Julie Hoffmeister Smith, Timothy J. St. George and Cindy D. Hanson of Troutman Pepper Locke LLP.

Verisk is represented by Jasmeet K. Ahuja and Allison J. Caplis of Hogan Lovells.

GM and OnStar are represented by David L. Balser, Susan M. Clare, John C. Toro, Peter Starr and Matthew B. Rosenthal of King & Spalding LLP.

The drivers are represented by John R. Bevis of the Barnes Law Group LLC, Norman E. Siegel of Stueve Siegel Hanson LLP, Cafferty Clobes Meriwether & Sprengel LLP, DiCello Levitt LLP, Scott + Scott Attorneys at Law LLP, Tycko & Zavareei LLP, Bradley Grombacher LLP, Miller Law Firm PC, Motley Rice LLC, Girard Sharp LLP, Cotchett Pitre & McCarthy LLP, Morgan & Morgan PA, Casey Gerry Schenk Francavilla Blatt & Penfield LLP, Lynch Carpenter LLP, Kopelowitz Ostrow PA, Robbins Geller Rudman & Dowd LLP, Kantrowitz Goldhamer & Graifman PC, Keller Rohrback LLP, and Childers Schlueter & Smith LLC.

The case is In re: Consumer Vehicle Driving Data Tracking Litigation, case number 3115, in the U.S. District Court for the Northern District of Georgia.

--Editing by Adam LoBelia.

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Chancery Tosses 'Unripe' AES Advance Notice Bylaw Suit

By **Katryna Perera**

Law360 (April 15, 2025, 4:25 PM EDT) -- A Delaware vice chancellor tossed a suit against the global utility and power company AES Corp. and its top brass that challenged the company's advance notice bylaw, finding there is no "ripe" controversy or dispute for the court to review.

The suit **alleges** AES Corp. has "weaponized" advance notice requirements in its bylaws to make it "unreasonably difficult, if not impossible," for stockholders to nominate candidates for the company's board.

Vice Chancellor Nathan A. Cook issued an **opinion** on Monday stating that for the court to undertake an equitable review of the challenged advance notice bylaw, it must first be presented with a ripe dispute.

However, no such dispute exists in the current action since plaintiff Martin Siegel, an AES Corp. stockholder, does not plan to nominate a director to the AES board, nor does he know of anyone who intends to nominate someone, the opinion states.

"The remedy for an enforceability or as-applied challenge is to declare the bylaw unenforceable in some respect, and having a ripe dispute allows this court to specify against whom the bylaw cannot be enforced," the opinion states. "Because plaintiff has disclaimed a facial validity challenge but has not demonstrated that a ripe controversy exists, this court grants defendants' motion to dismiss."

Vice Chancellor Cook called Siegel's challenge a "hypothetical one" since he has admitted that he is not interested in running a proxy contest and has not pointed to any other stockholders who the challenged bylaws have deterred from nominating a director for election to the AES Corp. board.

"Plaintiff asks this court to review the advance notice bylaws now, even though no stockholder presently seeks to nominate a director for election to the AES board. Whether any stockholder will attempt to do so in the future is unknown, and the facts that might arise are not static," the opinion states. "So this is precisely the sort of case in which the court should 'postpon[e] review until the question arises in some more concrete and final form.'"

According to the opinion, Siegel "attempts to sidestep the ripeness" requirement by claiming that the bylaws have "'inequitably chill[ed] the fair exercise of the AES stockholders' franchise,' and analogizing the supposed deterrent effect of the advance notice bylaws to that of stockholder rights plans and dead hand proxy puts."

However, the vice chancellor said an advance notice bylaw is not comparable to a stockholders' rights plan or dead hand proxy put, since the latter measures are characterized by "immediate and devastating" financial consequences. In contrast, the only consequence of the advance notice bylaw would be a rejection of the director nominees.

"Upon a rejection of nominees, the proverbial eggs are perhaps broken, but hardly scrambled; equity need not leap to the stove before anyone even considers a meal," the opinion states.

Siegel's suit named 11 of the company's current and former board members, alleging breaches of fiduciary duty and seeking a court declaration that recent changes to the company's bylaws are invalid.

Siegel claimed that the changes to the bylaws added several improper provisions, such as an "acting in concert" definition that "chills stockholder engagement," because it requires any stockholder who nominates a slate of directors to identify a broad assortment of people in order to make the nomination valid.

The advance notice provisions also require a nominating stockholder to disclose commercially sensitive performance-related fees it could pay if the value of its company stock appreciates, according to the court filings.

According to Siegel's court papers, the company has stated publicly that it amended the bylaws to address Rule 14a-19, a new universal proxy card rule adopted by the U.S. Securities and Exchange Commission in November 2021 that went into effect in September 2022.

Rule 14a-19 was supposed to make it easier for shareholders to nominate alternative director candidates to company boards, but often, it has resulted in the opposite, as companies responded by adopting **stringent advance-notice requirements** that shareholders struggle to meet.

Representatives for the parties did not immediately respond to requests for comment on Tuesday.

Siegel is represented by Gregory V. Varallo, Andrew E. Blumberg, Daniel E. Meyer, Jeroen van Kwawegen, Christopher J. Orrico, Shiva Mohan and James Janison of Bernstein Litowitz Berger & Grossmann LLP, Christine M. Mackintosh, Rebecca A. Musarra, Vivek Upadhya and William G. Passannante II of Grant & Eisenhofer PA, Lori Marks-Esterman and Jacqueline Y. Ma of Olshan Frome & Wolosky and Michele S. Carino of Greenwich Legal Associates LLC.

AES Corp. and the individual defendants are represented by Blake Rohrbacher, Matthew W. Murphy and John M. O'Toole of Richards Layton & Finger PA and Marjorie P. Duffy, Elizabeth A. Benshoff and Daniel C. Loesing of Jones Day.

The case is Martin Siegel v. Jay Morse et al., case number 2024-0628, in the Court of Chancery of the State of Delaware.

--Editing by Vaqas Asghar.

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Ex-AutoZone CEO Beats Investor's 'Short Swing' Profits Suit

By **Sydney Price**

Law360 (April 15, 2025, 9:16 PM EDT) -- [AutoZone](#)'s former CEO has beaten an investor's suit accusing him of making \$1 million in short-swing profits trading in the company shares at the expense of the company, with the judge ruling the transactions were exempt from certain insider trading rules.

In the order signed on Monday dismissing the suit with prejudice, U.S. District Judge John P. McCalla said ex-Autozone CEO William C. Rhodes III has an exemption from the U.S. Securities and Exchange Commission's rule that profits earned by company insiders on the purchase and sale, or sale and purchase, of company shares within a six-month period should belong to the company.

According to the investor, Rhodes made more than \$1 million off trading AutoZone shares during that time period under the "universally accepted" method used to calculate such profits.

But Judge McCalla said the shares at issue were part of grantor retained annuity trusts, or GRATs, that he was the beneficiary of, and that they were exempt from the short-swing profit rules established by the Exchange Act.

"Because Defendant's reacquisition of the AutoZone stock through the GRAT annuity payments was a 'transaction ... that effected only a change in the form of beneficial ownership without changing Defendant's pecuniary interest in the subject equity securities,' it is thus exempt from Section 16 of the SEC Act," the order states.

Judge McCalla also said that even though AutoZone shareholder Nosirrah Management LLC has constitutional standing to bring the suit, it did submit a timely argument of its claim that Rhodes had a qualified interest, and not a pecuniary interest, in the shares.

Nosirrah alleged in its March 2024 lawsuit that Rhodes, who headed the car parts retailer between 2021 and 2023, made more than \$1 million trading AutoZone shares between December 2021 and July 2022.

Rhodes argued he funded the GRATs with shares of AutoZone common stock, which were contributed subject to an annuity obligation, and that the alleged wrongful transactions were annuity payments under the terms of the GRATs.

In a motion to dismiss the suit, Rhodes cited a 1997 no-action letter from the U.S. Securities and Exchange Commission involving such a trust to support his position, but Judge McCalla **determined in November** that Nosirrah had plausibly alleged the opportunity existed for Rhodes to abuse inside information and refused to dismiss the suit at the time.

Counsel for the parties did not immediately respond to requests for comment on Tuesday.

Nosirrah Management is represented by Ann Heimberger Jernow of Sterlington PLLC.

Rhodes is represented by Kristine L. Roberts and Pete A. Brunson of Baker Donelson Bearman Caldwell & Berkowitz PC.

The case is Nosirrah Management LLC v. AutoZone Inc. et al., case number 2:24-cv-02167, in the

U.S. District Court for the Western District of Tennessee.

--Editing by Vaqas Asghar.

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SPAC Officers Seek Coverage For Post-Merger Lawsuits

By **Ganesh Setty**

Law360 (April 15, 2025, 7:49 PM EDT) -- Beazley Insurance Co. and certain former directors and officers of a special purpose acquisition company that ultimately became a solar financing company accused the successor company in Delaware Chancery Court of failing to indemnify and advance costs they incurred in two cases stemming from the SPAC merger.

In **their lawsuit** Monday against Sunlight Financial Holdings Inc. and parent ED Umbrella Holdings LLC, Beazley and the individual SPAC plaintiffs pointed to numerous "indemnification sources" they said obligated SFH and EDUH to cover costs incurred in the underlying actions, filed in New York federal court and Delaware state court.

Among those sources were underlying indemnification agreements between SFH's predecessor and the individual SPAC officers, referred to in the complaint as "D&O plaintiffs," along with SFH's bylaws, the bylaws of the SPAC and merger agreement between the SPAC and SFH's predecessor, Beazley and the D&O plaintiffs argued.

"SFH has acknowledged that it owes indemnification and advancement obligations to D&O plaintiffs," they said, adding that while SFH agreed to cover \$20,000 in defense and indemnification costs incurred to date, such a sum is a "tiny fraction of the amounts incurred."

EDUH, which later acquired SFH following the 2021 SPAC merger, hasn't provided any coverage amounts either, Beazley and the D&O plaintiffs further alleged. The individual plaintiffs in Monday's action are Geoffrey Strong, James Crossen, Olivia Wassenaar, Wilson Handler, Christine Hommes, Joseph Romeo, Jan Wilson and John Stice.

According to court filings, the coverage dispute dates to July 2021, when the SPAC, originally called Spartan Acquisition Corp. II, finalized its merger with SFH's predecessor, Sunlight Financial LLC. Following the transaction, Spartan, the surviving entity, was then renamed to SFH, according to the complaint Monday.

"In the merger agreement, SFH agreed that it would continue to provide indemnification and advancement to the D&O plaintiffs for a period of six years and that it would not adversely modify their existing indemnification and advancement rights," Beazley and the D&O plaintiffs said.

Then in October 2023, SFH announced that it would be acquired by EDUH and SFH's secured lender. In the ensuing investment agreement, EDUH agreed to honor SFH's prior obligations to indemnify and hold harmless past, present and future directors and officers of SFH, the plaintiffs continued, saying such officers included the specific D&O plaintiffs.

As part of the EDUH acquisition, SFH further agreed to a Chapter 11 reorganization, emerging from that process with a plan that left SFH's prior indemnification obligations "unimpaired and unaffected," Beazley and the D&O plaintiffs noted.

Yet, EDUH and SFH have still failed to cover costs incurred in the two underlying actions, the plaintiffs said, noting that because of those alleged failures, Beazley had to step in and cover part of a settlement in one of the actions, which was first filed in New York federal court in December 2022.

Amended thereafter, that lawsuit accused some of the D&O plaintiffs of violating the Securities

Exchange Act by making false and misleading statements in the proxy materials in advance of the SPAC merger. Without indemnification from SFH or EDUH, Beazley said it had to step in to cover the portion of the settlement attributable to the D&O plaintiffs named in the New York action.

The second underlying action, meanwhile, first filed in Delaware Chancery Court in July 2023, similarly accused the former SPAC officers of breaching their fiduciary duties to Spartan shareholders by making false statements that allegedly impaired the shareholders' ability to redeem shares in the lead-up to the merger.

Though that action has been stayed in advance of a mediation scheduled for this coming July, Monday's complaint further alleged that the underlying Delaware action will "result in continuing expenses to the D&O plaintiffs."

"The indemnification sources provide the D&O plaintiffs with multiple, independent, and nonexclusive sources for their indemnification and advancement rights from defendants," Beazley and the D&O plaintiffs further maintained Monday.

Representatives of Beazley, the D&O plaintiffs and SFH did not immediately respond to a request for comment Tuesday. Contact information for EDUH was not immediately available.

The D&O plaintiffs are represented by Matthew F. Davis of Potter Anderson & Corroon LLP, and by Michael C. Holmes and Jeffrey Crough of Vinson & Elkins LLP.

Beazley is represented by Bruce W. McCullough of Bodell Bove LLC, and by Nicholas R. Novak and David F. Cutter of BatesCarey LLP.

Counsel information for the other parties was not immediately available.

The case is Geoffrey Strong et al. v. Sunlight Financial Holdings Inc. et al., case number 2025-0399, in Delaware Chancery Court.

--Editing by Amy Rowe.



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3rd Circ. Won't Restart Claims In Dodge Charger Class

By **P.J. D'Annunzio**

Law360 (April 15, 2025, 6:12 PM EDT) -- A Third Circuit panel on Tuesday held that it could not revive a lawsuit filed by owners of Dodge Charger Hellcats claiming that the muscle cars fell short of their advertised performance, noting that the lower court did not adequately explain its reasoning in dismissing the bulk of the case.

The split three-judge panel considering the car owners' **appeal** in their suit against Fiat Chrysler Automobiles US LLC ruled that the lower court's dismissal of certain claims did not constitute a final judgment on certain counts filed by certain plaintiffs, which meant the appellate court did not have jurisdiction to decide the matter.

The lower court also failed to explain its reasoning as to why there was "no just reason to delay" the dismissal of those counts and not others in accordance to Federal Rule of Civil Procedure 54(b), U.S. Circuit Judge Thomas Hardiman wrote in the Third Circuit's **majority opinion**.

"We have held that the district court's judgment is not final, which suffices to dismiss the appeal for lack of jurisdiction," Judge Hardiman wrote. "But even if the judgment were final, we would have to remand this case to the district court for further explanation as to why there was no just reason for delay. The court did not — as required by our precedent — 'explain[] how it balanced the' relevant 'competing concerns that inform our interpretation of Rule 54(b).'"

Judge Hardiman said the lower court's references to judicial administration interests and "miscellaneous factors" were not good enough.

"So the district court has not provided us with any analysis to scrutinize," Judge Hardiman said.

U.S. Circuit Judge Peter J. Phipps said in his dissenting opinion that Rule 54(b) does not prohibit the allowance of an immediate appeal in situations where some plaintiffs' claims remain.

"In practice, it may be somewhat uncommon to permit some but not all plaintiffs who bring the same count to proceed immediately with an appeal, but it may be efficient in some circumstances, and it is permitted by the rule," Judge Phipps said.

The suit was filed in Delaware federal court in 2021. The car owners alleged that FCA violated consumer protection laws by selling vehicles with faulty rear differentials, making claims of fraud and breach of warranty.

A Delaware federal judge tossed five plaintiffs' cases, while allowing a sixth plaintiff's case to move forward. The car owners subsequently appealed the ruling.

During an oral argument session in October, the three-judge circuit panel asked counsel if it was wiser to wait for the remaining underlying counts to be litigated before initiating an appeal.

An attorney for the plaintiffs declined to comment. An attorney for FCA did not immediately respond to a request for comment.

U.S. Circuit Judges Thomas M. Hardiman, Peter J. Phipps and Arianna J. Freeman sat on the panel for the Third Circuit.

The plaintiffs are represented by Russell D. Paul, Abigail Gertner, Natalie Lesser and Amey J. Park of

Berger Montague, Tyler C. Anderson, Ryan Wu and Cody R. Padgett of Capstone Law APC and Kelly A. Green of Smith Katzenstein & Jenkins LLP.

FCA is represented by Stephen A. D'Aunoy and Brandon L. Boxler of Klein Thomas Lee & Fresard and Jessica L. Reno and Patrick Brannigan of Eckert Seamans Cherin & Mellott LLC.

The case is Diaz et al. v. FCA US LLC, case number 24-1197, in the U.S. Court of Appeals for the Third Circuit.

--Editing by Rich Mills.

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Apple Challenges PFAS Claims In Watch Band Lawsuit

By **Craig Clough**

Law360 (April 15, 2025, 9:04 PM EDT) -- Apple has urged a California federal judge to toss a proposed class action claiming its smartwatch bands contain toxic chemicals, arguing the suit relies on speculative "barebones" testing data and fails to show its products actually contain harmful substances.

In a motion to dismiss filed on Monday, the tech giant argued the plaintiffs lack standing to bring their claims because the study the suit relies on as its foundation fails to tie polyfluoroalkyl substances to any actual Apple, Inc. smartwatch bands.

The company said the plaintiffs "base their claims solely on the barebones Peaslee Paper, but those test results do not support plaintiffs' theory because they contain anonymous results which cannot be directly linked to an Apple Watch or 'any specific product brands or models.'"

Apple also argued that the "only basis for plaintiffs' conclusory allegation that the Apple Watch bands may contain [PFAS] is the Peaslee Paper, which anonymizes its results. At most, the paper could report testing of two Apple Watch bands, but the paper does not specify which Apple Watch bands were tested or affirmatively link the testing results to any Apple Watch bands. Courts in other jurisdictions routinely dismiss similar allegations for lack of standing."

The **January suit** filed by two California residents, Dominique Cavalier and Kiley Krzyzek, alleges Apple deceived consumers into thinking its smartwatches could further their health goals and were part of the company's environmentally sustainable initiative, when, in reality, the wristbands are made with per- and polyfluoroalkyl substances chemicals, which are known to be detrimental to human health and pollute the environment.

The company knew these chemicals were in the bands but chose to hide this fact in order to "increase profits and gain an unfair advantage" over competitors, the suit claimed. Apple is the global market leader in the smartwatch industry, according to the suit.

One of the firms representing the plaintiffs is the Clarkson Law Firm PC, which also represents consumers who filed a **similar suit** against Samsung over their use of PFAS in their smartwatch wristbands.

Both suits point to a December study published in the journal Environmental Science & Technology Letters, which they say tested several watch bands used by major tech companies that make smartwatches, including Google, which owns Fitbit, and Apple and Samsung. The complaints said the study found that a few bands Apple sells contained "elevated levels" of fluorine, which is an indicator of the presence of PFAS. Three specific products — the Apple Watch Sport Band, Ocean Band and Nike Sport Band, which all retail for about \$49 — were among those found likely to have PFAS, the suit said.

In Monday's motion to dismiss, Apple attacked the suit as a whole, while also narrowing in on specific claims. Broadly, it argued that the study cited in the complaint does not specifically name or target Apple Watch bands because it simply lists the results based on the price point of a product, leaving the reader to deduce which product is being referred to.

This approach results in several problems for the complaint, Apple argued, including that "[a]t most, the paper could report testing of two Apple Watch bands, but the paper does not specify which Apple Watch bands were tested or affirmatively link the testing results to any Apple Watch bands," Apple

said. "Courts in other jurisdictions routinely dismiss similar allegations for lack of standing."

The plaintiffs also failed to allege the specific watches they bought "contained any PFAS much less the concentration of those PFAS, the amount of PFAS a user may be exposed to during normal use, and potential of that exposure to affect human health. Plaintiffs' theory that they overpaid for watch bands because they contained 'toxic' PFAS is therefore unsupported by their own allegations."

Apple also said some claims should be individually tossed, or the size of the proposed class should be narrowed. Those arguments included that the plaintiffs lack standing to bring claims under laws for states in which they do not reside or to bring claims on behalf of a nationwide class under California law.

PFAS are called forever chemicals because it's nearly impossible for them to break down in the environment, and they have been tied to cancer, fertility issues, high blood pressure in pregnant women and other health problems, according to data from the U.S. Environmental Protection Agency. PFAS exposure can be found almost everywhere, and most people have measurable levels in their blood, according to a recent report by the White House's Office of Science and Technology Policy.

Counsel for the parties did not immediately respond to requests for comment.

The proposed class is represented by Ryan J. Clarkson, Yana Hart and Mark Richards of Clarkson Law Firm PC and Benjamin F. Johns and Samantha E. Holbrook of Shub Johns & Holbrook LLP.

Apple is represented by William Francis Tarantino and Brittany Lynn Scheinok of Morrison & Foerster LLP.

The case is Dominique Cavalier et al. v. Apple Inc., case number 5:25-cv-00713, in the U.S. District Court for the Northern District of California.

--Additional reporting by Jonathan Capriel. Editing by Drashti Mehta.

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Shrinking Crocs Case 'Deja Vu' For Judge Asked Again To Ax

By **Bonnie Eslinger**

Law360 (April 15, 2025, 10:41 PM EDT) -- A California federal judge asked by Crocs to toss a proposed false advertising class action claiming the footwear maker's plastic shoes shrink after exposure to heat said at a Tuesday hearing it feels like "Groundhog Day," since she recently denied class certification in a related case making similar claims.

U.S. District Judge Trina L. Thompson made the comment at the start of a hearing in San Francisco on Croc Inc.'s motion to dismiss the putative class action filed by Jacqueline Mongalo and two other consumers in December. The judge also asked the parties to say how the Mongalo case differs from one filed two years earlier by Martha Valentine and one other plaintiff.

"It's deja vu for the court," Judge Thompson said. "We've been here before, and I feel like it's Groundhog Day, and I'm somewhat reliving my past."

A lawyer for Crocs, Becca Wahlquist of Kelley Drye & Warren LLP, told the court that the two cases are basically the same.

"The complaint is not even different from the Valentine complaint," Wahlquist said. "All of the ads that they're saying, 'Here's the ads that are out there in the marketplace,' are the same ads that were in the Valentine complaint, even though these are plaintiffs from years later."

In addition, while the Mongalo plaintiffs also alleged that their Crocs shrank, they didn't provide any measurements or photos of their shoes, the lawyer said.

"We have the same concerns about the plaintiffs in this case versus the last case," Wahlquist said. "We'd like to make sure that they actually have shoes."

The complaint also doesn't sufficiently outline its fraud allegations, explaining what ads the plaintiffs saw and relied on, the lawyer said.

In addition, while the Mongalo plaintiffs claimed that the Crocs are defective because the plastic shrinks in extreme heat, there's nothing in the complaint that shows other plastic shoes fare better under the extreme condition.

"They've had years to develop this evidence in the other case, and yet they just issued the exact same complaint," Wahlquist said.

The plaintiffs' lawyer, Seth Safier of Gutride Safier LLP, told the court that Mongalo and the other three consumers sought to intervene after the class certification motion was filed in the Valentine case and Crocs challenged the plaintiffs standing, Safier said.

So it's back to square one.

"Where we are now is akin to the first stage of the Valentine case," Safier said. "We utilized the same complaint because that's the complaint that these plaintiffs proposed to intervene on."

And in the Valentine case, Judge Thompson found those allegations sufficed to state a claim, he added.

"We're looking back to the Valentine complaint, where this court said these allegations are okay to go forward," the lawyer said.

In the Valentine case, the court did subsequently deny class certification, but that ruling wasn't based on any classwide determinations related to such issues as predominance or commonality, Safier said. One plaintiff was found to lack standing, and the other, typicality.

"These plaintiffs sought to intervene, your honor rejected that," Safier said. "And now they've come in, [and] each one of them has receipts in this instance, including their Crocs, to establish that they shrunk."

Mongalo and the other three consumers are typical of the class they seek to represent, he said.

Judge Thompson did not issue a ruling at the end of Tuesday's hearing but said she'd take the matter under submission.

The suit brought by Mongalo, Chelsea Garland, Philip Werner and Melissa Harmon claims Crocs' shoes are defective because they shrink when exposed to heat and sunlight. The plastic shoes shrank after they were removed, not while in use, the plaintiffs said, and Crocs knew that its shoes would shrink but didn't warn its customers.

In its motion to dismiss, Crocs seeks to toss the Mongalo claim in its entirety. None of the advertisements presented by the plaintiffs in their case advertise Crocs' plastic shoes as unshrinkable, the company argued.

"Plaintiffs fail to identify any express warranty of 'size-stability' in Crocs' advertising," the company stated.

As to the suit's implied warranty claim, the plaintiffs said that their shoes "shrank and/or warped" soon after purchase, but none claim to have contacted Crocs, the company said. If they had, they could have made a claim under Crocs' limited warranty, "which as a matter of law defeats an implied warranty claim," the suit stated.

In addition, the consumers' fraud-based claims are not alleged with the heightened particularity required by law, Crocs told the court.

"While all plaintiffs allege that they saw Crocs' marketing material showing that the products were appropriate for use outdoors, in hot and sunny environments, plaintiffs Garland, Mongalo, and Harmon offer no indication about when or where they saw these representations, and none of [the] plaintiffs identifies any specific ads that he or she saw," the motion to dismiss stated.

The fraud-based claims also fail because none of Crocs' representations or alleged omissions can be construed under law as a false statement, "let alone likely to deceive a reasonable consumer," the company told the court.

At the very least, the plaintiffs' class allegations should be stricken, Crocs contended. Among other concerns, the proposed class is overbroad since the plaintiffs seek to represent a California state class of all consumers who purchased the shoes regardless of whether they experienced any shrinkage or relied on any advertisements.

In its opposition to the motion to dismiss, Mongalo and her three fellow plaintiffs said the company is largely recycling arguments that were previously made and rejected by the court in the Valentine case.

"It ignores that advertisements, including label claims, can serve as express warranties," the plaintiffs argued.

This is a different case with different plaintiffs who sustained the same injuries, overpaying for shoes that shrink, the Mongalo plaintiffs said.

In addition, the plaintiffs argued, Crocs is improperly trying to bring issues of class certification in at this early stage of the case before there's an evidentiary record.

The plaintiffs are represented by Seth A. Safier, Marie A. McCrary, Anthony J. Patek and Kali R. Backer of Gutride Safier LLP.

Crocs is represented by Becca Wahlquist, Ruth Kwon, Jonathan Cooperman and Caitlin Hickey of Kelley Drye & Warren LLP.

The case is Jacqueline Mongalo et al. v Crocs Inc., case number 3:24-cv-09037, in the U.S. District Court for the California Northern District.

--Editing by Dave Trumbore.

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Securities Org. Says SEC Must Hand Over Texting Sweep Data

By Sarah Jarvis

Law360 (April 15, 2025, 10:11 PM EDT) -- The American Securities Association has urged a Florida federal court to order the U.S. Securities and Exchange Commission to turn over spreadsheets related to the regulator's enforcement sweep of so-called off-channel communications, arguing the SEC's "ever-changing excuses" cannot shield it from Freedom of Information Act requirements.

In a Monday **cross-motion for summary judgment** and opposition to the SEC's own March motion for summary judgment, the ASA repeated its call for the SEC to turn over evidence the organization has said could shed light on how the regulator came to impose billions of dollars' worth of fines against firms whose employees communicate business-related information over unmonitored texting and chat apps.

The ASA argued the SEC should have promptly produced 52 spreadsheets containing information about companies previously caught in the agency's crosshairs as part of the enforcement sweep, as well as the factors the agency used to determine fine amounts. But the agency "has fought the requests at every turn," the association said.

"Because the SEC asserted only one exemption during the administrative process — an argument it has now abandoned — the SEC must produce the spreadsheets," the ASA argued.

In that administrative proceeding, the SEC had rejected ASA's requests under Exemption 7(A) of FOIA, which exempts records used in ongoing enforcement proceedings, according to Monday's motion. After ASA **filed suit** in June, the SEC "unsurprisingly abandoned this argument and now asserts a new rationale, claiming that the spreadsheets are exempt under the work product and deliberative process privileges," the ASA said Monday.

The organization argued the SEC has forfeited its ability to assert new exemptions, but even if it hadn't, the spreadsheets cannot be withheld as attorney work product because they were prepared in anticipation of a settlement rather than litigation, and because they include "factual information that reveals no relevant mental impressions of an attorney."

And the agency cannot claim the deliberative process privilege because the spreadsheets discuss actions the SEC has already taken, reflect the SEC's formal policy for determining penalties and contain purely factual material, the ASA argued.

Separately, the SEC hasn't shown that disclosure of the spreadsheets would cause foreseeable harm, according to the motion.

"At a minimum, the SEC must produce non-exempt material and, if necessary, the court should conduct in camera review," the ASA argued.

The SEC had argued in its March 24 **summary judgment motion** that releasing the spreadsheets would cause harm by revealing SEC attorneys' "mental processes" in the off-channel communications cases, which the agency said could affect future related matters.

"The information about the resolved cases reflects how attorneys determined what amounts to recommend to the commission, not the basis for the commission's determination of the penalty," the SEC argued. "The spreadsheets were created solely for enforcement attorneys' discussions in the

context of ongoing off-channel communications cases."

The spreadsheets fall under FOIA's Exemption 5, which covers "inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency," the SEC argued.

Further, disclosure would have a chilling effect on discussions and collaboration regarding decisions about bringing enforcement actions and what penalties to recommend for the SEC to seek, the agency argued. SEC attorneys would be reluctant to write down their thoughts and deliberations, "which would hamper the agency's ability to carry out its responsibilities in a manner that is consistent with governing laws."

"In addition, releasing the spreadsheets regarding the penalty recommendations in off-channel communications cases would cause public confusion regarding the weight given to different factors in making the penalty recommendations," the SEC argued. "Public confusion could also result because the deliberations reflected in the spreadsheets may not be reflective of the final penalty recommendation made to the commission."

The agency, alongside sister regulator the U.S. Commodity Futures Trading Commission, has collected billions of dollars in penalties from companies settling accusations that they failed to keep legally required records because their employees were communicating business information off-channel, including via text messaging services like WhatsApp.

The amounts paid by individual companies have varied widely, from the **\$1.25 million** agreed to by Huntington Investment Co. in February to the **\$125 million** agreed to by some of the nation's largest financial institutions.

Counsel for the ASA didn't immediately respond to a request for comment Tuesday, and an SEC spokesperson declined to comment beyond the agency's public filings in the case.

The ASA is represented by J. Michael Connolly, Steven Begakis and Conor Woodfin of Consovoy McCarthy PLLC.

The SEC is represented in-house by Esther Cheng.

The case is American Securities Association v. Securities and Exchange Commission, case number 8:24-cv-01377, in the U.S. District Court for the Middle District of Florida.

--Additional reporting by Jessica Corso. Editing by Lakshna Mehta.